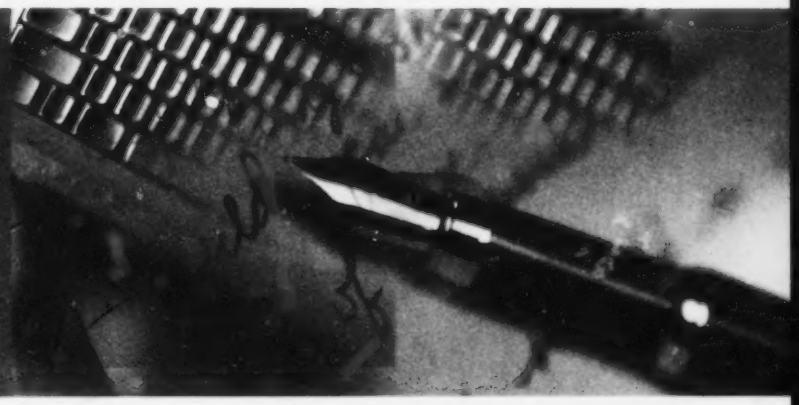
RESEARCH REPORT

LIFE LEASE HOUSING IN CANADA: A PRELIMINARY EXPLORATION OF SOME CONSUMER PROTECTION ISSUES

EXTERNAL RESEARCH PROGRAM



CMHC SCHL

HOME TO CANADIANS

Canada

CMHC—HOME TO CANADIANS

Canada Mortgage and Housing Corporation (CMHC) is the Government of Canada's national housing agency. We help Canadians gain access to a wide choice of quality, affordable homes.

Our mortgage loan insurance program has helped many Canadians realize their dream of owning a home. We provide financial assistance to help Canadians most in need to gain access to safe, affordable housing. Through our research, we encourage innovation in housing design and technology, community planning, housing choice and finance. We also work in partnership with industry and other Team Canada members to sell Canadian products and expertise in foreign markets, thereby creating jobs for Canadians here at home.

We offer a wide variety of information products to consumers and the housing industry to help them make informed purchasing and business decisions. With Canada's most comprehensive selection of information about housing and homes, we are Canada's largest publisher of housing information.

In everything that we do, we are helping to improve the quality of life for Canadians in communities across this country. We are helping Canadians live in safe, secure homes. CMHC is home to Canadians.

You can also reach us by phone at 1 800 668-2642
(outside Canada call (613) 748-2003)
By fax at 1 800 245-9274
(outside Canada (613) 748-2016)

To reach us online, visit our home page at www.cmhc.ca

Canada Mortgage and Housing Corporation supports the Government of Canada policy on access to information for people with disabilities. If you wish to obtain this publication in alternative formats, call 1 800 668-2642.

104-00221/

Life Lease Housing in Canada: A Preliminary Exploration of Some Consumer Protection Issues

Prepared for:
Canada Mortgage and Housing Corporation
External Research Program
Project Officer: Luis Rodriguez

Prepared by:
Lumina Services Inc.
900-555 Burrard Street
Vancouver, BC
V7X 1M9
Principal Investigator: Kate Mancer

June, 2003

Abstract

This 70-page research report describes life lease housing and how it operates in Canada; discusses the regulatory perspectives, policies, and plans of the five provinces (Ontario, Manitoba, Saskatchewan, Alberta and British Columbia) where life lease housing is currently available; describes the views of some development consultants about consumer protection issues; and identifies consumer protection issues that are of interest to governments and consumers and suggests how these might be addressed in a legislative framework. The discussions in the report are based on surveys of sponsors, development consultants, and the governments of provinces where life lease housing is currently active.

Executive Summary

Introduction

Over the last two decades, a new housing option for seniors has been emerging, known most commonly as life lease housing. As a form of tenure, life lease is something of a hybrid, a fact that has led to some uncertainty among sponsors, consumers, and governments.

This report was written in an effort to remove some of the uncertainty and lack of knowledge about life lease housing, particularly from a regulatory perspective.

Objectives

The report had five basic objectives:

1. To describe how life lease housing operates in Canada;
2. To discuss the regulatory perspectives, policies, and plans of the five provinces where life lease development is active with particular emphasis on Manitoba, the only province to have introduced legislation dealing with life lease projects;
3. To describe the views of some development consultants about consumer protection issues.
4. To discuss some of the consumer protection issues currently of interest to governments and consumers.
5. To suggest which specific issues might be addressed in a legislative framework.

It is very important to note that consumers were not consulted during the preparation of this report and may well have entirely different views than those discussed in the report.

How Information was Obtained

The report was based on surveys of sponsors, development consultants, and the governments of provinces where life lease housing exists (Ontario west).

What is Life Lease Housing?

Legally speaking, a life lease is a legal agreement that permits its purchaser to occupy a dwelling unit for life[1] in exchange for a partially or wholly recoverable lump sum payment as well as a monthly payment to cover maintenance and operating costs. Beyond that definition, there are only three characteristics that are shared by all life lease projects in Canada:

1. Life lease residents are not the owners of their units. They may be tenants or they may be purchasers of a "right to occupy", but they are not owners of an interest in land – their names are not on title. The owner is the sponsor, which in almost all cases is a non-profit organization.

[1] Most life leases have clauses in their agreements requiring the ability to live independently. In Ontario, 75% of recently-developed life leases have care packages available allowing residents to age in place longer than might have been the case had the care packages not been available. Many projects require occupants to purchase a minimum package of care services when purchasing a life lease unit.

Executive Summary

Introduction

Over the last two decades, a new housing option for seniors has been emerging, known most commonly as life lease housing. As a form of tenure, life lease is something of a hybrid, a fact that has led to some uncertainty among sponsors, consumers, and governments.

This report was written in an effort to remove some of the uncertainty and lack of knowledge about life lease housing, particularly from a regulatory perspective.

Objectives

The report had five basic objectives:

1. To describe how life lease housing operates in Canada;
2. To discuss the regulatory perspectives, policies, and plans of the five provinces where life lease development is active with particular emphasis on Manitoba, the only province to have introduced legislation dealing with life lease projects;
3. To describe the views of some development consultants about consumer protection issues.
4. To discuss some of the consumer protection issues currently of interest to governments and consumers.
5. To suggest which specific issues might be addressed in a legislative framework.

It is very important to note that consumers were not consulted during the preparation of this report and may well have entirely different views than those discussed in the report.

How Information was Obtained

The report was based on surveys of sponsors, development consultants, and the governments of provinces where life lease housing exists (Ontario west).

What is Life Lease Housing?

Legally speaking, a life lease is a legal agreement that permits its purchaser to occupy a dwelling unit for life[1] in exchange for a partially or wholly recoverable lump sum payment as well as a monthly payment to cover maintenance and operating costs. Beyond that definition, there are only three characteristics that are shared by all life lease projects in Canada:

1. Life lease residents are not the owners of their units. They may be tenants or they may be purchasers of a "right to occupy", but they are not owners of an interest in land – their names are not on title. The owner is the sponsor, which in almost all cases is a non-profit organization.

[1] Most life leases have clauses in their agreements requiring the ability to live independently. In Ontario, 75% of recently-developed life leases have care packages available allowing residents to age in place longer than might have been the case had the care packages not been available. Many projects require occupants to purchase a minimum package of care services when purchasing a life lease unit.

2. Substantial resident equity is required, generally ranging from 25% of the value or cost of the unit to 100%.

3. Occupancy is restricted to seniors

How Many are there?

Although no one knows for sure, best estimates are that there are about 200 projects in Canada, two-thirds of them in Ontario and Manitoba. Almost all have been sponsored by non-profit groups such as churches, service clubs, and ethnic associations.

Regulatory Framework

Manitoba is the only province to have enacted legislation specific to life lease housing. The Life Leases Act, which is administered by the Residential Tenancies Branch, became law in Manitoba on December 1, 1999 after a long and comprehensive consultation process with all stakeholders.

Although other provinces have not introduced legislation specific to life leases, some regulatory mechanisms may apply. In British Columbia for example, the provisions of the Real Estate Act apply to life leases.

Although life lease housing operates rather differently in Manitoba than elsewhere, many aspects of the Manitoba legislation would be transferable to other provinces.

Sponsor Views about Legislation

As part of the sponsor survey, sponsors were asked to agree or disagree with this statement: "Some people have suggested that greater government regulation of life leases would make the concept even more marketable than it is now because consumers, lenders, lawyers, and others would feel more secure about investments in life lease housing."

Responses were as follows:

Strongly agree	9
Somewhat agree	22
Somewhat disagree	1
Strongly disagree	1
No opinion	4

In light of this ranking and in light of the written comments on the questionnaires, it is probably fair to say that survey respondents believe some measure of consumer protection for life lease housing would be helpful, although they are somewhat concerned about the possibility of over-regulation.

Conclusions and Recommendations

The study identified some consumer protection issues that may be of some interest to governments considering legislation. These include:

- **Disclosure**

Life leases are a relatively new form of tenure and many consumers are unfamiliar with them. Except in Manitoba and BC, there are no mandatory disclosure requirements that sponsors must observe. Competent and reputable sponsors want to ensure that purchasers clearly understand what they are buying, but the degree to which disclosure is made is an individual decision that varies from sponsor to

2. Substantial resident equity is required, generally ranging from 25% of the value or cost of the unit to 100%.

3. Occupancy is restricted to seniors

How Many are there?

Although no one knows for sure, best estimates are that there are about 200 projects in Canada, two-thirds of them in Ontario and Manitoba. Almost all have been sponsored by non-profit groups such as churches, service clubs, and ethnic associations.

Regulatory Framework

Manitoba is the only province to have enacted legislation specific to life lease housing. The Life Leases Act, which is administered by the Residential Tenancies Branch, became law in Manitoba on December 1, 1999 after a long and comprehensive consultation process with all stakeholders.

Although other provinces have not introduced legislation specific to life leases, some regulatory mechanisms may apply. In British Columbia for example, the provisions of the Real Estate Act apply to life leases.

Although life lease housing operates rather differently in Manitoba than elsewhere, many aspects of the Manitoba legislation would be transferable to other provinces.

Sponsor Views about Legislation

As part of the sponsor survey, sponsors were asked to agree or disagree with this statement: "Some people have suggested that greater government regulation of life leases would make the concept even more marketable than it is now because consumers, lenders, lawyers, and others would feel more secure about investments in life lease housing."

Responses were as follows:

Strongly agree	9
Somewhat agree	22
Somewhat disagree	1
Strongly disagree	1
No opinion	4

In light of this ranking and in light of the written comments on the questionnaires, it is probably fair to say that survey respondents believe some measure of consumer protection for life lease housing would be helpful, although they are somewhat concerned about the possibility of over-regulation.

Conclusions and Recommendations

The study identified some consumer protection issues that may be of some interest to governments considering legislation. These include:

- **Disclosure**

Life leases are a relatively new form of tenure and many consumers are unfamiliar with them. Except in Manitoba and BC, there are no mandatory disclosure requirements that sponsors must observe. Competent and reputable sponsors want to ensure that purchasers clearly understand what they are buying, but the degree to which disclosure is made is an individual decision that varies from sponsor to

sponsor. It is certainly not uncommon for no or very little disclosure to occur, both during development and during occupancy.

From the standpoint of enhancing consumer protection, a requirement to provide full disclosure of all material facts, including among other issues the risk of loss of entrance fees as well as ongoing disclosure of all financial information is probably the single most effective mechanism available to governments.

- **Safety of Deposits Prior to Occupancy**

Prior to occupancy, there are concerns about what would happen to deposit funds if a sponsor is forced to halt construction before the project is finished, or if sufficient pre-sales cannot be made to allow construction to begin.

In BC, deposits of any size must be held in trust until occupancy is possible. In other provinces, deposits are always used for construction purposes, although it is common for initial deposits to be held in trust until construction begins. In Manitoba, entrance fees are held by a trustee and can be used for construction purposes if certain conditions are met.

Many non-profit sponsors believe that the ability to use deposits for construction purposes is absolutely critical to the continuation of the life lease model. The fact that sponsors in BC are not able to use resident equity may account for the relative scarcity of life lease projects in that province.

Although there is no record of consumers losing their deposits as a result of project failure during the construction stage in any province, there is no question that funds are at some risk except in BC and Manitoba, where their use during construction is either prohibited (BC) or strictly regulated (Manitoba).

Ontario is considering a system of deposit insurance. Other provinces may wish to refer to the Manitoba legislation, which permits the use of deposits during construction but under very defined circumstances.

- **Security of Occupancy**

Consumers may invest very significant amounts of money in life lease projects, the security for which varies greatly from province to province and from sponsor to sponsor. In Manitoba, entrance fees are usually secured through an interest registered against the title of the property in the name of the resident, although it is important to note that this mortgage ranks below any mortgage of the lender. In some projects in Saskatchewan and Alberta, residents hold mortgages on their units that are registered at Land Titles. In BC, where most recent projects have been strata titled (although all titles are held in the name of the sponsor), some leases are registered on title.

Many sponsors routinely ensure that their residents' interests are registered in some way on title, in order to protect both resident and sponsor. In BC, the Superintendent of Real Estate insists that some mechanism be used to register residents' interests on title, either by way

of lease registration or by way of mortgage registration. Other provinces could take similar steps.

- **Refunding of Entrance Fees**

Where they are available (most commonly in Western Canada), so-called "guaranteed" buy-back provisions are an important and very appealing feature of life lease projects from the perspective of purchasers. Of course such provisions are not really guaranteed and some sponsors have stopped using the term. Where guaranteed buy-backs are provided for, there is usually some period of time specified before sponsors are required to refund entry fees – usually from 90 to 180 days. Many agreements also incorporate a provision for a longer refund period in the event of slow markets – up to two years in many cases. The market value model that is so common in Ontario avoids the problem of landlords having insufficient funds to repay entrance fees because residents are responsible for finding a buyer for their unit at whatever price they can achieve.

From a regulatory standpoint, there is really no practical way of ensuring that life lease residents are never at risk of losing part or all of their entrance fees, as there is no practical way of ensuring that losses do not occur in any real estate transaction.

Life lease projects that allow for the possibility of stratification and individual ownership in the event of project failure can provide some protection against loss of entrance fees, at least against total loss.
Full disclosure about how and under what circumstances entrance fees will be refunded will at least ensure that consumers are aware of the risks they are assuming.

- **Replacement Reserves**

Condominium legislation ensures that strata councils make provision for replacement reserves but there is no legislative requirement (except in Manitoba) for life lease operators to do the same. Reputable sponsors will make provision for replacement reserves as a standard operating procedure, but there is no law compelling them to do so. Governments that are thinking of introducing life lease legislation might want to consider the usefulness of including a requirement for mandatory replacement reserves, similar to Condo Acts, as well as annual reporting of the amounts in them as required in the Manitoba legislation.

- **Warranty protection**

Warranty protection is mandatory in only two provinces where life lease housing exists, BC and Ontario. In Ontario life leases are not eligible for coverage although they are in BC.

Life lease consumers must understand exactly what the maintenance, repair, and warranty provisions are in the projects they live in or are contemplating moving to. Such information could readily be included in disclosure statements.

- **Provision of Services**

Many life lease projects already offer services to their residents and more are likely to do so as time goes on. The

availability of services can create issues from a consumer protection perspective, particularly where residents have invested large amounts of capital in their home. If renters decide they do not like the quantity or quality of available services, they can simply move out. Moving out may or may not be so easy for life lease (or condo) residents.

Regulators would not want to become involved in disputes over the quality of food or other such issues, but they may want to consider some way of dealing with the availability and cost of services that are promised by sponsors to life lease purchasers.

- **Governance**

The involvement of residents in the operation of the life lease they live in is a complex issue. Many residents do not want to be involved in managing their building – the existence of a sponsor who provides these services is often one of the reasons people choose life lease in preference to condominiums.
Some sponsors routinely provide full disclosure of operational details; others very little. Some appoint residents to the Board of Directors, others limit resident involvement to planning social activities. Some sponsors believe residents ought to be fully aware of operational matters because of the significant amount of equity they have invested in the project, others regard residents as tenants who will get their money returned when they move out and so ought not to be concerned with management issues.

Should governments legislate mandatory resident participation in project management, whether or not residents want to participate? Although no doubt there are those who believe the answer to this question is yes, it may be that a more workable approach is to rely on full disclosure of all operating information to ensure that residents at least know how their project is being managed.

- **Dispute Resolution**

Governments that are contemplating legislation might well include a provision for alternate dispute resolution such as arbitration or mediation instead of resorting to the courts for the resolution of life lease issues that become very contentious.

Table of Contents

Foreword 8

Chapter One: Introduction 9

Chapter Two: Life Lease Projects in Canada – a Brief Review 12
- Nature of Life Leases 14
- Affordability 16
- Provision of Services 17

Chapter Three: Provincial Perspectives and Legislative Considerations 19
- British Columbia 20
- Alberta 23
- Saskatchewan 24
- Manitoba 25
- Ontario 27

Chapter Four: Development Consultant Views 32

Chapter Five: Sponsor Survey 34
- British Columbia 34
- Alberta 35
- Saskatchewan 37
- Manitoba 38
- Ontario 39

Chapter Six: Some Consumer Protection Issues Governments May Wish to Regulate ... 42

Appendix 49

Foreword

This report explores some issues related to the regulation of life lease housing in Canada. The issues are explored from the perspective of sponsors, development consultants, and the governments of the provinces where life lease housing projects operate (Ontario west). Among those provinces, only Manitoba has developed legislation specifically focused on life lease, although other provinces are studying the possibility of introducing similar legislation. A consumer survey was beyond the scope of the study.

The development and operation of life lease housing is a difficult subject to address in one report for two major reasons. The first reason is the significant variability that exists between provinces and often within provinces in terms of how individual life lease projects are developed and managed. The second reason is that many of the issues discussed in the report are too complex to permit comprehensive analysis within the framework of a study such as this one.

Within these limitations, the report is intended to provide basic information for governments, sponsors, current and prospective residents of life lease housing projects, and anyone else with an interest in the subject of regulating life leases.

Chapter One: Introduction

What is Life Lease Housing?

This is not a simple question to answer because the variability among life lease projects in Canada is extreme. In some places, the only real difference between a life lease unit and a condo unit is that the life lease resident's name is not on title and the sponsoring organization can control who lives in the building.[2] In other places, the only real difference between a life lease unit and a rental unit is that the life lease resident must make a very large deposit.[3] This variability makes life difficult for consumers, who often do not understand exactly what is meant by life lease housing, and also for sponsors and developers who try to market the concept.

Legally speaking, a life lease is a legal agreement that permits its purchaser to occupy a dwelling unit for life[4] in exchange for a partially or wholly recoverable lump sum payment as well as a monthly payment to cover maintenance and operating costs.

Beyond that definition, there are only three characteristics that are shared by all life lease projects in Canada:

2. No matter what province they live in, life lease residents are not the owners of their units. They may be tenants or they may be purchasers of a "right to occupy", but they are not owners of an interest in land – their names are not on title. The owner is the sponsor, which in almost all cases is a non-profit organization.

4. Substantial resident equity is required, generally ranging from 25% of the value or cost of the unit to 100%. Some portion of this equity is returned to the resident, or their estates, when the residents end occupancy of their unit.

5. Occupancy is restricted to seniors

A Brief History of Life Lease Housing in Canada

The first life lease projects were built in Saskatchewan and Manitoba in the mid-1980's. They were developed in some cases to fill a gap in the market between fully subsidized non-profit housing and high end luxury accommodation; and in other cases because there was no other way to create needed seniors housing. Since then, about 200 projects have been built in provinces from Ontario west to BC. There are no, or very few, life lease projects in Québec or in Atlantic Canada.[5]

[2] Most Ontario life leases can be so characterized.

[3] In Manitoba life leases are subject to many of the provisions of the Residential Tenancies Act.

[4] Most life leases have clauses in their agreements requiring the ability to live independently. In Ontario, 75% of recently-developed life leases have care packages available allowing residents to age in place longer than might have been the case had the care packages not been available. Many projects require occupants to purchase a minimum package of care services when purchasing a life lease unit.

[5] As Chapter Two explains in more depth, there is no way of knowing exactly how many life lease projects exist in

Life lease housing was created to meet a need in the market place that still exists. In fact, since the withdrawal of most governments from the financing and subsidization of new social housing[6], the need for alternative mechanisms to create seniors housing has increased. Although it is true that life lease housing can be unaffordable for low income households[7], it can and does provide good quality and reasonably affordable housing for many seniors in Canada. When done well, life lease housing is an excellent way to combine the desire of sponsoring organizations to create and manage housing for seniors in their communities with the need of those same seniors for good quality affordable housing.

Many new life lease projects are in the planning stages and there are no signs that its appeal to housing consumers is diminishing. Although several provincial governments are debating the value of introducing legislation to deal with the proliferation of life lease projects, which have been operating on an essentially unregulated basis in most places, Manitoba is the only province to have done so.

Report Objectives

This report has five basic objectives:

6. To describe how life lease housing operates in Canada;
7. To discuss the regulatory perspectives, policies, and plans of the five provinces where life lease development is active with particular emphasis on Manitoba, the only province to have introduced legislation dealing with life lease projects;
8. To describe the views of some development consultants about consumer protection issues.
9. To discuss some of the consumer protection issues currently of interest to governments and consumers.
10. To suggest which specific issues might be addressed in a legislative framework.

Report Structure

The report is divided into six chapters:

Chapter One: Introduction
Chapter Two: Life Lease Projects in Canada; A Brief Review
Chapter Three: Provincial Perspectives
Chapter Four: Development Consultant Perspectives
Chapter Five: Results of Sponsor Survey
Chapter Six: Some Consumer Protection Issues Governments May Wish to Regulate

Report Methodology

The report is based on four components:

a. a survey of sponsoring organizations;
b. a survey of development consultants specializing in life lease housing;
c. key informant surveys with all five provincial governments where life lease housing exists – i.e. all

Canada. There may be one or two life lease projects in Atlantic Canada but we have not been able to identify them thus far. As of the publication date of this report, Life Lease Associates of Canada, a Toronto-based firm, was working with a sponsor in Atlantic Canada.

[6] Governments in Canada continue to allocate billions of dollars annually to subsidize housing projects developed in the past.

[7] There are many exceptions to this general rule, especially in more affordable housing markets.

provinces west of Québec. Key informant interviews were conducted in person in BC, Alberta, and Manitoba; by phone in Saskatchewan and Ontario;

d. previous work the author has conducted on life lease housing, notably Alternate Tenure Arrangements, published by CMHC in 2000.

Copies of the survey instruments are included in the appendix.

Chapter Two: Life Lease Projects in Canada – a Brief Review

No one knows exactly how many life lease projects there are in Canada. Even in Manitoba, the only province that regulates life lease housing, there is no mechanism in place to monitor the development and construction of new projects, nor the operation of existing ones. The accompanying chart probably includes most of the occupied life lease projects in Canada, but because there are so many of them and because they are developing so quickly, it is very difficult to be precise about the numbers.
In addition, different terminology used to describe this form of tenure (life estate, life tenure, life lease) adds to the difficulty of keeping an accurate count, as does the fact that projects may not be aggressively marketed as life leases. Development consultants are aware of the projects they are assisting, but not all life lease projects involve development consultants.

Occupied Life Lease Projects in Canada		
Province	Number of Projects	Total Number of Units
BC	22	1,400
Alberta	12[8]	600
Saskatchewan	17	1,100
Manitoba	72[9]	2,200
Ontario	67	5,300
Total	190	10,600

The rest of this chapter provides a quick overview of life lease housing as it operates in Canada today so that readers have a common understanding of the model. Chapter Two does not specifically address consumer protection issues – these are mostly discussed in subsequent chapters.

[8] The Government of Alberta advises that there are more than 12 life lease projects in Alberta, although they are unsure of the exact number.
[9] The large number of projects in Manitoba relative to its population is due to the fact that there is a long history of life lease in that province and people are fairly familiar with the concept.

Sponsorship

Most life leases in Canada have been sponsored by community based non-profit organizations such as churches, service clubs, or ethnic groups. There are very few private life lease projects. Villa Royale in Saskatoon is one, Devonshire Village in Edmonton and Camrose Crown Care in Camrose, Alberta are two Alberta examples, and there are a few in Manitoba and Ontario, although there are a number of private developers in Ontario who are apparently becoming increasingly interested in the life lease market.

Why do sponsors choose life lease?

Organizations that want to create housing for seniors have four basic tenure choices – rental, condo, life lease, or coop. Few sponsors are attracted to the condo model because once complete, the ownership and operation of a condo devolves on the individual owners, who have complete control over the sale of their units on the open market. Coops are similarly based on the principle of self-management. Most sponsors want to retain ownership and on ongoing role in project management. In Ontario for example, the life lease sponsor may set out as a requirement in the life lease agreement a "Right of First Refusal" to match a prospective purchaser's offer and subsequently purchase or buy-back the unit to permit the sponsor greater control over the sale of the units.

From the perspective of rental tenure, few sponsors have the financial capacity to build and operate a viable rental project. The amount of equity required to ensure reasonable rents vastly exceeds the resources of the typical community based non-profit organization.

That leaves life lease. Sponsors choose life lease because it allows them to retain control of the project and it can provide a source of necessary financing. In most provinces (not BC), sponsors are allowed to use deposits for construction purposes.

For their part, consumers who are attracted to life lease projects invariably cite the reputation of the sponsor as one of the major reasons for their interest, which helps to explain why non-profit community based organizations have successfully developed life lease projects in many communities.

From the perspective of for-profit developers, life lease housing presents some complications. The very nature of a life lease project implies an ongoing role for the sponsor (in most cases – The Meridian in Ottawa is an exception[10]), which may not be appealing for some private developers. The owners of Villa Royale, who are interested in a long term investment, have hired a non-profit housing provider, LutherCare Communities (formerly Lutheran Sunset Homes) to manage Villa Royale and to provide services for its residents. The developer and owner of the Devonshire Village life lease in Edmonton, Christenson Developments, has built several life leases for the Lions' Club in Edmonton and is building the

[10] The Meridian was sponsored by the former Municipality of Nepean. Post-completion, control of the project was turned over to the residents.

Devonshire Village life lease as part of an aging-in-place campus. Christenson chose the life lease model in preference to the condo model for the same reason many non-profit sponsors choose life lease – they did not want to lose control of the ownership or the operation of the project.

The involvement of for-profit developers in life lease housing concerns some people and is an area that will be explored later in this report.

Renter or Owner?

One of the many rather dramatic differences among life lease projects in Canada is the renter/owner dichotomy. In Manitoba, life lease residents are unequivocally considered tenants and the provisions of the Residential Tenancies Act apply to them. In contrast, in BC life lease purchasers qualify for the Home Owner grant, a grant intended to help homeowners defray property taxes. Life lease residents in BC are not covered by the Residential Tenancy Act.

Sometimes life lease residents are described by sponsors not as owners, but as purchasers of a life interest in their units. They are required to pay annual property taxes and the sponsors take pains to emphasize the ownership nature of their residency. This is particularly the case where residents capture all or part of any appreciation in the market value of their unit. These projects are very similar to condominiums, **although residents do not have title to their units** and are not responsible for project operation.

This model (i.e. very similar to condominiums) is much more common in Ontario than in the rest of Canada. Nevertheless, life lease projects in Ontario are not covered by the Ontario New Home Warranty Program because they are considered to be rental projects.

The owner/renter dichotomy is revisited in subsequent chapters, but to repeat the statement made at the outset of this report, nowhere in Canada are life lease residents owners in the commonly understood meaning of that word; i.e., names on titles, although their interest in property is often secured in other ways.

Nature of Life Leases

There are four basic forms of life lease arrangements in use in Canada, some much more common than others.

Declining Balance Lease – really a form of prepaid rent, the redemption value of the entrance fee in this model declines over time in fixed and set amounts. For example, at Tabor Manor in Abbotsford BC, entrance fee refunds for leases terminated within four years of signing are calculated as the original entrance fee less a discount equal to 2% per annum of the original lease payment. For leases terminated between years 5 and 9 inclusive, the discount increases to 3.5% per annum, and for leases terminated between years 10 and 15, the discount is 4.5% per annum. As an example, if the original entrance fee were $75,000 and a resident moved out after 10 years, the refund would be calculated as $75,000 - (45% x $75,000) = $41,250. The advantage of this model is that entrance fees are lower than is the

case with other models, but it is used only rarely.

Fixed Value Lease – for as long as the building stands, the entrance fee refund is always equal to the original entrance fee established when the building was completed, perhaps less a fee for administrative expenses. The advantage of these leases is that they become more affordable over time relative to other market alternatives, although they offer no inflation protection to residents (that is, the value of their investment remains constant although the market in general may appreciate – the value of their investment declines in real terms). This model is quite common in Western Canada.

Index-Based Lease – in this model, entrance fee refunds are based on the original amount plus an additional return pegged to an index such as the Consumer Price Index.

Market Value Lease – redemption value is based on market forces. Residents gain or lose equity depending on the state of the residential real estate market at the time they sell relative to the state of the market at the time they bought. If the value of real estate has been rising (that is, the value of the residential real estate market in general), the value of life leases is also likely to have risen. If values in the residential real estate market have fallen, life lease values are likely to follow this market trend as well. Where sponsors have made contributions to reduce initial entrance fees, by donating land for example, some portion of the capital gain on resale may be retained by the sponsor in recognition of the donation. This model is very common in Ontario, less so but certainly not unheard of in Western Canada.

Required Investment

Often consumers must pay the full development cost of their unit upon occupancy. In contrast, the so-called "Manitoba Model" allows for a minimum investment of much less than the full purchase price (as low as 25%), although consumers may, if they wish, pay the full amount. In this case, the monthly rent is substantially lower than is the case with a partial down payment.

Projects in provinces other than Manitoba are starting to introduce the partial payment model. Purchasers at Lions Cove in Victoria can finance up to half the cost of their unit, although 85% of purchasers paid the full entrance fee. At The Meridian in Nepean, purchasers can finance up to 75% of the cost of their unit with a loan from the TD Bank.[11] Terms of up to 10 years and amortization periods of up to 20 years are available. The bank accepts an assignment of the life lease occupancy agreement as collateral and security for the loan.

It is important to note in the non-Manitoba cases that residents who borrow to finance part of the entrance fee repay the loan as they would a standard mortgage; that is, they accumulate equity in the project while they repay the loan. Residents in Manitoba who pay less than the full amount of the capital value of the unit

[11] As noted later in this report, since its merger with Canada Trust, the TD Bank is no longer active in the life lease lending field.

pay higher rents but they do not accumulate equity.

Affordability

Life lease projects generally advertise themselves as (and are generally perceived to be) providing affordable housing, usually because of the non-profit nature of their operation, or because of a contribution of land or capital from the project sponsor , or both. In Ontario, a significant cost savings occurs as a result of lower marketing costs - $1,000-$2,000 per unit for life leases compared to $10,000 per unit for condominiums.[12]

However, unless significant donations have in fact been made, it is very hard for life lease projects to achieve construction costs much below more conventional projects, even allowing for the absence of developer profit and for some potential savings in interim financing costs in provinces where resident equity can be used for construction purposes. Life lease projects may include a number of amenities that are not usually provided in condominium projects, which may add significantly to project cost.

From the perspective of purchasers, those projects that permit minimum deposits (the Manitoba model) are more affordable in a capital cost sense than projects that require the full purchase price, although the resulting level of monthly rent in the Manitoba model may be relatively high.

There are a number of life lease projects that operate on the basis of non-appreciation of entrance fees and these projects will of course become increasingly affordable over time, as will projects whose mortgages are paid off.

Refunding of Entrance Fees

The only feature shared by all life lease projects insofar as entrance fee refunds are concerned is that outgoing residents (or their estates) get some of their initial investment back. They may get the whole amount back less an allowance for refurbishing and administrative fees, they may get the whole amount plus whatever capital appreciation has occurred since they moved in, they may get the whole amount back adjusted for the length of their residency – the variability is enormous.

There is no right or wrong approach – it depends on sponsor and resident goals and objectives. Some sponsors do not want to assume the risk of agreeing to refund the original investment in its entirety regardless of market conditions, although these guaranteed buybacks are extremely popular with consumers.[13] Other sponsors are willing to assume the risk because of the appeal of the model to consumers.

For their part, many consumers have no objection to the impossibility of realizing capital gains on their

[12] Information provided by Kevin Sullivan, Government of Ontario.

[13] The use of the word "guaranteed" may be rather misleading since in point of fact, there may be occasions when sponsors are unable to honour such guarantees. Some industry participants avoid the use of the term "guaranteed buy-back" for this reason and believe consumers would be better off if the term were replaced by a more precise phrase. Although the term is used throughout this report, readers should be aware of its limitations. In Manitoba, buy-backs are referred to as refunds.

investment. They prefer the simplicity of a guaranteed buy-back to the chance of capital appreciation. Where guaranteed buy-backs are provided for, there is usually some period of time specified before sponsors are required to refund entry fees – usually from 90 to 180 days. Where sponsors are unable to refund entrance fees in the specified period of time for whatever reason, most occupancy agreements contain provisions dealing with these situations.

In Ontario, guaranteed buy-backs are not as common as they are in the four western provinces, although sponsors may reserve a "Right of First Refusal" to purchase a life lease unit. Residents in Ontario are often responsible for selling their units and remain responsible for all fees and charges until they are able to find another buyer for their unit.

Most life lease projects, even those with guaranteed buy-backs, count on repaying entrance fees to outgoing residents with entrance fees received from incoming residents. Many are also building up funds that will enable refunds if there is a delay in finding a new resident.

Provision of Services

Given their focus on seniors, the provision of services in life lease projects (hospitality services such as meals as well as personal care services such as help with activities of daily living) is often a natural fit. Many life lease projects do offer services – as mentioned previously, more than 75% of recent life lease projects built in Ontario provide services for their residents. Two projects in Alberta provide licensed multi-level care.[14] It is no doubt inevitable that more and more life lease projects will offer services in the future, which creates a number of consumer protection issues explored at greater length later in this report.

Why are they popular?

There are a number of reasons:

- Often they are the one of the very few available options for communities that want to develop seniors housing. A good example of this is the two life lease projects in Neepawa, Manitoba, a town of fewer than 4,000 people.
- Almost always, they are sponsored by local community groups and service clubs and thus have roots in the community
- They are usually developed by non-profit organizations on a break even basis.
- They are designed specifically for a seniors' market and include features and amenities that appeal to seniors. They are "lifestyle" buildings that can provide a supportive environment for seniors and a real sense of community.[15]
- Because of the nature of life leases, sponsoring organizations may be able to legally impose restrictions such as age limits, although allowable restrictions vary from province to province. In Ontario, the Ontario Human Rights Code only

[14] Laurier House I and II

[15] In Ontario, life lease units often sell at a premium compared to similar condo units because of the value people attach to a strong sense of community, although they should theoretically sell at a discount because titles are not in the name of residents.

permits age restrictions for individuals aged 65 and over.

- Because sponsoring organizations in some cases have the right of first refusal to buy units back, the organization has control over ongoing membership
- Often, residents have the option of lowering their monthly payments by contributing more equity, or conversely, they can allocate their capital to some other use.
- Because of large initial payments, residents take an "ownership-like" interest in the building, but they do not have to become members of a condominium corporation.
- Depending on the exit model, residents may be able to earn a return on their investment (unlike conventional rentals), or alternatively, they may avoid legal and real estate fees and market risk by purchasing or renting a life lease instead of a condo. In Ontario this is generally not possible because of the widespread use of the market value model, in which residents are responsible for legal fees and real estate fees.
- Where entrance fees are refundable by the sponsor or landlord, residents do not have to worry about resale.
- Life lease residents appreciate simplicity. Many residents report that they have no interest in participating in the management of their project and consider the fact that they are not required to one of the major advantages of the life lease model.
- Conventional homeownership often becomes too troublesome for many seniors.
- Some seniors object to conventional renting[16] for income tax reasons (i.e. if they sell their house and invest the proceeds they must pay tax on interest earned and they must pay for their rent with after-tax income).

[16] The term "conventional renting" is meant to distinguish between renting in the standard rental market and renting a life lease unit, where life leases are considered rentals as in Manitoba.

Chapter Three: Provincial Perspectives and Legislative Considerations

Many provincial governments in Canada have become increasingly aware in recent years about the growth in the life lease market, which is relatively unregulated except for Manitoba. Even where statutes of various kinds apply, something of a regulatory patchwork has been created, resulting in an uncertain situation for consumers, many of whom have invested large amounts of money in their life lease units. The fact that most sponsors of life lease projects are benevolent sponsors (community based non-profit organizations) may be comforting, but certainly does not guarantee the absence of risk.

Governments are concerned about issues such as disclosure, guarantee and buy-back provisions; the presence or absence of warranty protection; replacement reserve requirements; the security of entrance fee funds and other operating funds – the list goes on.

Legally, purchasers of life lease units in all provinces but Manitoba are in something of a legal no-man's land. Although units are often strata titled, the title to all the units remains in the name of the sponsor. Consequently projects may not fall under the purview of Condominium or Strata Title Acts,[17] nor do they fall under landlord and tenant legislation, except in Manitoba.

Manitoba is still the only province with life lease legislation, although other provincial governments have studied the possibility of introducing legislation specific to life lease housing. Alberta and British Columbia are currently looking into it (discussed later in this chapter).

Six years ago, a Toronto real estate lawyer had this to say about life lease housing:

"Life lease is gaining credibility by association. People have confidence in life lease agreements because they have confidence in the community-based groups that develop and manage these projects. Contracts and common sense replace legislation. This is friends buying from friends in a community backed project. There are no guarantees, but there are no guarantees even with legislation."[18]

That is essentially how life lease housing has been operating in most places in Canada for years[19], Manitoba now being

[17] Strata titled life lease projects in BC do fall under the purview of the Strata Property Act, although it seems highly likely that very few, if any, life lease residents realize this.
[18] Ron Crane, quoted in Today's Senior, February 6, 1996.
[19] In some provinces, most notably BC, the provisions of some statutes apply to life lease housing as well as to other

an exception. But other provinces are beginning to think that contracts and common sense may no longer provide adequate protection for consumers.

This chapter describes the nature of regulation in various provinces as it applies to the development and operation of life lease housing, as well as the views of provincial officials.

British Columbia

Until recently, life lease housing has generally been regarded as a form of ownership housing in BC – all residents, whether or not their particular life lease project is stratified,[20] qualify for the provincial Home Owner Grant, which provides an annual grant of $470 to help defray property taxes for homeowners. More recently, an Alberta-based non-profit organization (the Good Samaritan Society) has begun to develop life lease housing in BC in concert with a Manitoba-based company (FWS) and presumably because of the Manitoba connection, views its residents as tenants.

Regardless of the own/rent issue, the development and sale of life lease projects in BC are subject to the provisions of the Real Estate Act, in the same way that condominiums are. The Real Estate Act specifies that any subdivision of land involving an offer for sale or long term lease requires the filing of a disclosure statement with Superintendent of Real Estate, who is responsible for administering the Real Estate Act.[21]

Disclosure requirements include:

- The name and address of the developer,
- The names of all the directors,
- Legal description,
- General description, intended use, services provided, including recreational facilities,
- Material facts related to flooding or other environmental issues,
- Existing and proposed legal agreements,
- Encumbrances,
- Municipal approval,
- Financing commitment.

Deposits held in trust

If all the elements included in the disclosure requirements are in place, marketing can occur indefinitely and deposits of any amount may be taken, but they must be held in trust pending completion of the building and subsequent completion of the purchase.[22]

It is also possible for marketing to occur on the basis of Policy Statements 5 and 6. Policy Statement 5 permits marketing for six months on the strength of a development permit rather than a building permit.[23] Policy Statement #6 permits marketing for six months

forms of housing, examples being the Real Estate Act and the Strata Property Act.

[20] Some life lease projects are stratified and some are not. Most recent ones are stratified because stratification is usually a condition of CMHC approval. Even when projects are stratified, all titles remain in the name of the sponsor owner, not the residents themselves.

[21] Superintendent of Real Estate, (604) 660-2947, FICOM@gems9.gov.bc.ca

[22] Although it is legally possible for developers to hold deposit monies in their own trust accounts, in almost all cases deposits are held in the trust accounts of lawyers, notaries, or other professionals.

[23] Development permits are issued before building permits.

without a financial commitment in order to demonstrate marketability to a lender.

In these cases, deposits cannot be more than 10% of the purchase price, must be held in trust, and must be returned within 7 days if a material change occurs in matters covered in the disclosure statement. If no material changes are made, deposits are non-refundable.

However, after nine months, deposits are refundable if the developer/sponsor has not filed an amendment indicating that financing and a building permit are in place. If such an amendment has been filed, deposits continue to be non-refundable although held in trust until occupancy is possible and the life lease agreement has been signed.

BC is the only province in Canada where deposits cannot be used during the construction process. Although this ensures the safety of deposits, it increases the difficulty of developing life leases because sponsors must obtain financing in other ways and this can be difficult for non-profit organizations.

Security of Occupancy

From the standpoint of security for the life lease resident, the Superintendent of Real Estate requires either the registration of the lease on title, or some alternate mechanism such as registration of a mortgage on each unit in favour of the resident. In the event of difficulty, the resident would foreclose on the mortgagor (the sponsor) and become the owner of the unit. The advantage of the mortgage mechanism compared to lease registration is that lease registration triggers payment of BC's Property Purchase Transfer Tax, which amounts to 1% of the purchase price on the first $200,000 of value and 2% on the remainder.

Stratification

Most recent life lease projects, but not all, are strata (or condominium) titled. Usually this is done to satisfy a lender or a mortgage insurer, who want the comfort of knowing that in the event of default, a project could fairly readily be sold off as individual condominium units. Some sponsors also choose to stratify as a way of protecting their other assets in the event of default.[24]

Some sponsors choose not to stratify because even though all titles are in the name of the sponsor, stratified life lease projects in BC are subject to all the provisions of the Strata Property Act. According to the Act, if someone other than the owner of a unit in a stratified building has a lease of at least three years, then the renter (i.e. the life lease resident) has the same rights as the owner (i.e. the sponsoring organization). Generally speaking residents do not exercise these rights and it is quite probable that most residents do not even realize they have them. Nevertheless, sponsors who wish to retain control over their life lease project may prefer not to stratify, if they are able to avoid it.

Consumer Protection Post-Project Completion

The deposits of BC life lease consumers are well protected during the

[24] That is, in the event of default, residents would have the ability to foreclose on the sponsor and become the strata title owner of their unit, instead of suing the sponsor.

development and construction phases of a life lease project, but there is no real legal protection available once they have moved in, aside from the normal provisions relating to the ability to take civil action. Residents are commercial tenants since life leases are not subject to the general provisions of the Residential Tenancy Act.

If there are services involved (meals for example), residents have no real say in how they are delivered nor in their cost (i.e. they have no way of knowing if costs are reasonable or if there is some more cost-effective way of delivering them). If such services are being provided in a rental situation (for example in a congregate housing facility) and residents become dissatisfied they can simply move out. But residents who may have $200,000 or more invested in a life lease may not be able to adjust their living arrangements quite as readily. In addition, there is no real legal security vis-à-vis return of entrance fees.

Replacement Reserve Funds

Life leases that are stratified are technically subject to the provisions of the Strata Property Act vis-à-vis reserve funds. The size of the Contingency Reserve Fund (CRF) is subject to a number of rules, outlined below. If the amount of the CRF is:

a. less than 25% of the total annual budgeted contribution to the operating fund for the fiscal year that just ended, the minimum contribution to the CRF must be at least 10% of the total contribution to the operating fund for the current year;
b. 25% or greater but is less than 100% of the total annual budgeted contribution to the operating fund for the fiscal year just ended, the contribution to the CRF may be of any amount; or
c. equal or greater than 100% of the total annual budgeted contribution to the operating fund for the fiscal year just ended, any contribution to the CRF must be approved by a resolution passed by a ¾ vote at an annual or special general meeting.

It is possible that some stratified life lease projects are following the Strata Property Act policies on reserve funds. Some projects have implemented their own policies (see Chapter Five) but there may be life lease projects operating without any reserve funds at all – no one really knows, although clearly this is an important issue for consumers.

End of Building Life Policies

Eventually life lease projects are going to come to the end of their useful life and have to be demolished. At that point, the value will lie in the land, which will belong to the sponsor. The question of refunding the entrance fees of the last residents then arises. In BC, there are no provincial policies governing this issue, although some individual life lease projects have established their own sinking fund type arrangements.

"Guaranteed" Buy-Backs[25]

These are very common in BC and other western provinces as well. They appeal to consumers who appreciate the simplicity inherent in a guaranteed buy-back, as well as the absence of real estate and legal fees. Sponsors in BC have not posted security (e.g. a letter of credit) for guaranteed buy-backs. Non-profit sponsors simply do not have the financial capacity to fulfill such a requirement.

Sponsors deal with buy-backs in different ways. Some projects in BC typically require a non-refundable $2,500 deposit from residents in order to build up a buy-back fund that will, ideally, increase over time. Other sponsors may rely on a deduction at move-out that may be used in whole or in part to create and maintain a refund fund. But the basic mechanism relied on by sponsors to refund entrance fees in BC and indeed in most other places in Canada is a new resident moving in who provides the funds to repay the outgoing resident. That is why it is so important for sponsors and consumers to be confident about the strength of their local housing market **before** projects are developed.

If a new resident cannot be found and there are insufficient funds in the refund fund, occupancy agreements typically make provision for this in some way. Some agreements allow up to two years for repayment, during which period of time interest is paid on the outstanding amount. Manitoba has very detailed rules regarding repayment of entrance fees (see section on Manitoba).

Market Failures in BC

Somewhat ironically, although life lease consumers in BC are fairly well protected from a legislative standpoint compared to consumers in other provinces except Manitoba, there have been more instances of market failure in BC than in any other province. Four projects on Vancouver Island are either in foreclosure proceedings or teetering on the brink, and a fifth project in Rossland has also experienced serious difficulties. Unfortunately it is not possible to discuss the Vancouver Island cases because of various legal actions that are underway.

Public Consultation Process

On April 9, 2003, the BC government launched a public consultation process focused on life lease housing and long term leases. The consultation process is intended to help the government develop possible strategies to respond to these forms of tenure.

Alberta[26]

At the moment, only the provisions of common law apply to the development and operation of life lease housing in Alberta. All transactions relating to buying and selling life lease interests are essentially business transactions.

However, partly because they have received a few complaints from seniors,

[25] See footnote 12.

[26] Rob Phillips, Director Consumer Programs, Alberta Government Services, (780) 422-8177, rob.phillips@gov.ab.ca

the Alberta government has recently launched a process that is aimed at establishing whether or not life lease legislation is required in the province. Specific concerns include disclosure requirements, replacement reserve funds, cooling off periods, security of entrance fees, and the provision of services. Interesting non-government initiatives in Alberta include:

- A life lease that will be owned and operated by a for-profit developer is currently under construction in Edmonton (Devonshire Village, owned by Christenson Developments Ltd.). Although life lease residents will not realize any capital appreciation on their units, the appeal of the project lies in the existence of a landlord who will manage the project on behalf of the residents, the availability of services for those who want them, and the proximity of a licensed care facility. Those who prefer not to invest their money in the development but who want to live there can rent. Christenson Developments Ltd. also acts as development consultant for Lions Clubs in Edmonton.

Alberta is home to the only licensed life lease projects in Canada – Laurier House I and II.[27] The two phases of Laurier House I are in Lynnwood, a neighborhood in Edmonton. The second Laurier House is in Sherwood Park, which is part of the Edmonton metropolitan area. Residents of Laurier House pay the full cost of housing services and the Capital Health Authority pays the full cost of all required health services. Construction costs were financed through a bank loan and, through the sale of life leases, the Capital Care Group (the operator) was able to recover the full costs of construction. One of the advantages of this model is that the Capital Care Group is able to allow spouses and others who may require no care at all to live in a licensed facility. Although it offers all the services of a continuing care centre, Laurier House incorporates the philosophy and goals of a residential environment. An extensive evaluation of Laurier House I and II, Lynnwood, in Edmonton, concluded that the life lease model is a viable option for the continuing care system.[28] There are a number of reasons for this conclusion including the ability to access a source of capital (i.e. the residents' own equity), the creation of residential rather than medical environments for residents requiring care, and the ability of healthy spouses to live with frailer partners who require care.

Saskatchewan

Several years ago, the Saskatchewan Ministry of Justice prepared and circulated a discussion paper focused on life lease housing and the desirability of establishing a regulatory framework of some sort. The Ministry did get some response to the paper, but has not yet proposed legislation. At some point they believe they will, but timing is uncertain.[29] They have not heard any horror stories, although several years ago

[27] The model may be unique in North America.

[28] The evaluation was conducted by Dr. Doris Milke, Research Coordinator, Capital Care Group. Although the final report on the study is not yet available, Dr. Milke was interviewed by the principal author of this report.

[29] Madeline Robertson, Ministry of Justice, mrobertson@justice.gov.sk.ca

there seemed to be some confusion related to life leases that were stratified – residents were not entirely clear about how a stratified life lease differed from a condominium.

The Ministry has concerns about potential loss of entrance fees and also about aging in place issues. Facilities providing care are currently highly regulated and the government is uncertain about how, or if, to approach the regulation of life leases (and other housing types) that provide services for seniors. They are sensitive to the need to avoid over-regulating the industry, but at the same time recognize that frail seniors may require some degree of protection.

In the meantime, there are no, or very few, statutory requirements that life lease developers and operators must observe in Saskatchewan. There may be some aspects of the Residential Tenancies Act that life lease operators would have to comply with, mostly related to minimum standards, but it is not entirely clear how the provisions of the RTA apply to life lease projects.

The Saskatchewan Real Estate Commission, which enforces the Real Estate Act, does not currently regulate life lease housing projects.[30]

For its part, the Saskatchewan Housing Corporation (SHC) has participated in several innovative arrangements involving SHC, municipalities, and seniors to encourage the development of life lease housing in the province. For example, SHC provided $2.25 million to the Fairview Arms in Yorkton, a 50 unit complex providing housing and support services to community seniors. The City of Yorkton contributed $500,000 and the project's residents provided the rest of the financing via life lease entrance fees realized from the sale of their homes. Other similarly financed projects have been developed in Saskatoon (Arbor Green) and Regina (Benson Manor). [31]

Manitoba[32]

Manitoba is the only province in Canada to have introduced legislation regulating the development and operation of life lease housing. The Life Leases Act, which is administered by the Residential Tenancies Branch, became law in Manitoba on December 1, 1999 after a long and comprehensive consultation process with all stakeholders. A working group made recommendations to the government and focus groups with consumers ensured that forms were user-friendly. In addition to that Act, life leases in Manitoba are also subject to many provisions of the Residential Tenancies Act since life lease housing in Manitoba is considered a form of rental housing. Although the perception of life lease as a form of rental tenure is not confined to Manitoba, in no other province do the provisions of landlord/tenant legislation clearly apply to life lease housing (there is uncertainty in some other provinces). The Life Leases Act applies to both non-profit and for-profit landlords. A number of life leases have been developed by for-profit landlords in rural areas of the province.

[30] Kirk Bacon, (306) 374-5233.

[31] Saskatchewan Housing Corporation Annual Report 2001.

[32] Roger Barsy, (204) 945-0377, rbarsy@gov.mb.ca

The Manitoba Legislature created The Life Leases Act to do three main things:

- to require landlords to give tenants information about:
    - their life leases before they pay a pre-lease payment or an entrance fee;
    - the financial status of their complex at least once a year;
- to require landlords to protect tenants' funds;
- to amend The Residential Tenancies Act to make it apply more effectively to landlords and tenants of life lease complexes.

A review of the legislation conducted over the summer of 2002 revealed that developers, consumers, and other industry stakeholders are very satisfied with the way the legislation is working in practice.

In simple terms, life lease housing in Manitoba operates as follows:

- Prospective residents make a deposit, called a pre-lease payment, to signify their intention to lease a unit. The pre-lease payment is held in trust until the life lease agreement is signed, at which point it is generally applied to the entrance fee. Pre-lease payments are refundable if the tenant is not offered a lease by the occupancy date of the complex.
- Entrance fees are also held in trust until a seven day cooling off period has expired. Thereafter they must be held by a trustee and may be used to pay for development of the complex, although several conditions must be met before the entrance fees can be so used. These conditions are similar to those required by lenders.
- Entrance fees may be any amount from the minimum required by the sponsor to obtain mortgage financing to 100% of the capital cost of constructing the unit.
- A certain proportion of the entrance fee may be directed towards the Entrance Fee Refund Fund, held by a trustee. The proportion is not mandated by legislation. A mortgage is registered against the property to protect entrance fees in the event of insolvency, if there are any assets left after paying off other creditors.
- During occupancy, the legislation requires that tenants be informed at least once a year of the financial status of the project, including its replacement reserve. Landlords are required to hold a meeting at least annually to discuss the financial information and cannot simply provide written reports to tenants.
- There is no requirement in the legislation that tenants have representation on the Board of Directors.
- Where entrance fees are refundable, the legislation requires that at least 95% of entrance fees be fully refundable upon termination of the lease if the landlord is a for-profit landlord or if the term of the lease is for the tenant's life.
- Where an entrance fee has not been refunded as required by the legislation, after two years a tenant may ask the Trustee to demand payment. If the payment is still not forthcoming the Trustee must commence mortgage sale or foreclosure proceedings.

- Some complexes permit tenants to assign their lease to another person if the landlord is not able to provide a refund but this rarely happens.
- When a project is acquired by a new landlord through mortgage sale, tax sale, or foreclosure, each life lease may be terminated and the new landlord may choose not to repay the entrance fees. Without this provision in the legislation, lenders might not be able to resell a non-profit project to a for-profit landlord because the leases would require non-profit operation.
- Under the Residential Tenancies Act, non-profit life lease landlords can increase rents based on forecasts, unlike for-profit landlords who must first incur the added costs and then request an increase in rent in the following year. Private landlords are currently restricted to 1% annual rent increases (unless they apply for a higher amount), but there is no specified maximum for non-profit life lease landlords. However, any life lease tenant can request a review of a rent increase and the Residential Tenancies Branch has the power to order a reduction in the amount of the increase. New for-profit life lease landlords are exempt from rent control for 15 years. After that period they are subject to rent regulation, not rent review as is the case for non-profit landlords.
- Where services such as meals are provided in a life lease project, the provision of those services is not part of the tenancy agreement.
- Life leases in Manitoba cannot be built on leased land.
- Sponsors, directors, development consultants, and others involved in marketing a project (for money) are subject to stiff fines (for a first offence a fine of up to $20,000 or one year in jail or both) for making false or misleading statements that may induce a prospective tenant into entering into a life lease agreement.

Impact on consumers

As previously mentioned, the recent review (summer 2002) of Manitoba's legislation indicated a high degree of satisfaction on the part of stakeholders.

An important feature of the life lease legislation is disclosure. Complexes are required to provide specified information at the pre-lease payment stage, before entering into a lease, and at least annually on an ongoing basis. The content and forms used in providing this disclosure were developed by a multi-stakeholder working group.

Additionally, tenants need only give three months notice if they wish to move.

Although reputable sponsors and development consultants in other provinces may provide similar levels of consumer protection as provided for in the Manitoba Life Leases Act, it is important to recognize that not all sponsors and development consultants operate the same way.

Ontario[33]

Although there is no specific legislation focused on the development and operation of life lease housing in

[33] Kevin Sullivan, Ministry of Municipal Affairs and Housing, (416) 585-6541, Kevin.Sullivan@mah.gov.on.ca

Ontario, several provincial statutes do apply. However, very few of these relate to consumer protection as the following list illustrates:[34]

- The Land Transfer Tax Act – although life leases incorporating lease terms of less than 49 years were formerly exempt from Land Transfer Tax, this is no longer the case. All life lease transactions are now subject to tax. However, this policy is currently being reviewed and while the review is underway the Ministry is not actively enforcing the collection of this tax.[35]
- The Assessment Act – life leases are now assessed as residential, not multi-residential as they were formerly, and as such are assessed at a lower rate of property tax.
- The Residential Complex Sales Representation Act – although the act was not designed with life lease projects in mind, it may apply. It pertains to disclosure requirements
- Human Rights Code – allows age restrictions only for people aged 65 and over. Life leases that are marketed to residents aged 55+ must focus on lifestyle or services or amenities rather than on age restrictions that are enshrined in the life lease agreement. Restriction of 55+ residents in the agreement would be in contravention of the Code.

Other than these statutes, life leases are subject only to the principles of contract and common law. However, in view of the increasing proliferation of projects, the Ontario government has been considering a number of issues associated with life lease housing for several years. The government released a discussion paper in March, 2000 that described the basic nature of life lease housing in the province and raised a number of concerns from a consumer protection perspective.

Before discussing those issues, it will be helpful to review briefly the basic operational principles shared by most life lease projects in Ontario:

- Purchasers normally make two deposits – one to reserve a unit (typically $2,000 to $5,000), and the second when the life lease agreement is signed (20-25% of the purchase price). Unlike BC, deposits are not held in trust in Ontario and are routinely used to fund construction of the building.

- The duration of life lease agreements varies widely. Some sponsors retain a right of first refusal on all sales.

- Sponsors typically retain administrative fees of 5-10% of the resale value of units to cover refurbishment, marketing costs, and administrative costs.

- Life lease units typically have market values roughly comparable to equivalent condominiums (and often command premiums) although in theory, their value should be about 5-

[34] Vernon, Robert, Life Lease Housing – an Ownership Option for Ontario Seniors in Real Property Reports, March 2001.

[35] The Ontario budget of March 27, 2003 included an exemption for life lease transactions pursuant to agreements between a registered charity under the Federal Income Tax Act or a non-profit organization as specified in the regulation and the purchaser of the life lease. As of June 1, 2003, the exemption was not yet in effect.

10% less because of the lack of title.[36]

- Almost all life lease projects in Ontario follow the "market model" – that is, units are resold for whatever price the market will bear.

- Although it has never been legally determined, most sponsors assume that the provisions of the Tenant Protection Act do not apply to life lease housing.

- Projects are restricted to seniors, although restrictions are only legal under the Ontario Human Rights Code for people over the age of 65. In spite of that, projects are often marketed to the 55-64 age group.

Consumer Protection Issues

The paper identifies the following concerns from a regulatory perspective:w2

- Duration of life lease term/security of tenure – some agreements include a specific term, such as 49 years (formerly to avoid land transfer tax, now impossible since the Ministry of Finance decision that all life lease transactions are subject to the tax), while others extend over the occupant's life. Agreements may include terms that are difficult to define, such as those limiting occupancy to people who are not physically or mentally incapacitated, or may be unclear about what happens if an occupant or spouse outlives the term of the agreement.
- Disclosure – the paper notes that while some development consultants provide disclosure, most do not.
- Deposit security – deposits are very often used for construction purposes, unlike the situation in BC where deposits must be held in trust until project completion. In Manitoba, pre-lease payments must be held in trust until a lease agreement is signed and the pre-lease payments become part of the entrance fee. The lack of security for deposits is a significant consumer protection concern, not only because consumers stand to lose large amounts of money in the event of a project failure, but also because such a failure would be a major blow to the reputation of life lease housing as a suitable housing type for seniors.
- Governance – the majority of life leases allow very limited resident input in decision-making. Few sponsors share financial information which potentially affect the occupant's interest in the life lease, nor do they hold regular meetings with occupants.
- Reserve funds – although most Ontario life leases apparently have reserve funds, little is known about the size of the funds, nor about the degree of resident involvement in their management. Life Lease Associates of Canada, a consulting firm in Toronto, recommend a minimum of 15% of monthly maintenance fees be earmarked for replacement reserves.
- Dispute resolution – although very few disputes have ended in front of the courts, the fact that no other

[36] Ontario Ministry of Municipal Affairs and Housing, Planning and Development Division, Market Housing Branch, Life Lease: The New Wave in Retirement Housing, Ontario Bar Association, October 28, 2002, page 6.

dispute resolution mechanism exists could prove problematical in future. Some sponsors are using mediation and arbitration as preferred alternatives to the courts for dispute resolution. Alternative dispute resolution is generally seen to be more accessible to life lease occupants, more cost effective, and more expeditious than the court system.

- Administrative fees on resale – sponsors typically retain from 5-10% of resale value, an amount that is in addition to real estate and legal fees. However, sponsors are not usually clear about the nature or amount of the fee.
- Registration of agreements on title – some sponsors allow registration; others prohibit it to avoid financing complexities. If registration is not allowed, mortgage financing is more difficult for purchasers.
- Assignment and subletting – some agreements permit assignment; others do not.
- Insurance – it is unclear how many sponsors carry adequate amounts of insurance.
- Foreclosure – it is not clear what would happen to the status of life lease agreements in the event of foreclosure.

A Toronto real estate lawyer with an interest in life lease housing has recently published an article in Real Property Reports entitled Life Lease Housing – An Ownership Alternative for Ontario Seniors (see footnote 33).
After an exhaustive analysis of the issues, the author concludes that "Life lease housing in Ontario is here to stay and begs for legislation".[37]

He notes that several stakeholder groups have met with the Ministry, including The Ontario Association of Non-Profit Homes and Services for Seniors (OANHSS), which has consistently supported and encouraged the concept of life lease housing as an opportunity for non-profit organizations to participate in affordable housing development without the involvement of government financing.

The author suggests that life lease legislation should include provisions dealing specifically with the following issues:

- Deposit protection – either via deposit insurance or via trust requirements,
- Complete disclosure
- A requirement that all units in the building be similarly governed by the legislation
- Provisions dealing with leased land
- Occupancy charge safeguards
- Reserve fund safeguards
- As-of-right title registration of life lease agreement
- Requirements in the event of sale
- Insurance requirements
- Resident participation in management and financial affairs
- Provision and cost of care services
- Dispute resolution

In addition, the author suggests that other statutes be revised where

[37] Ibid, page 86.

appropriate to recognize the existence of life lease housing, for example the legislation governing the Ontario New Home Warranty Program. Readers wanting more information on these topics are referred to the Vernon report.

The study concludes thusly: "The challenge, of course, will be to draft legislation and regulations that will be acceptable to the various stakeholders in life lease housing".[38]

[38] Ibid, page 89 and 87.

Chapter Four: Development Consultant Views

Interviews were conducted with three major development consultants from across Canada – Life Lease Associates of Canada in Toronto, LutherCare Communities in Saskatoon, and Christenson Developments in Edmonton (developer as well as development consultant). The study team was unable to locate the development consultant who has developed a number of projects in BC, several of which are in or near receivership.[39]

LutherCare Communities, Saskatoon

LutherCare Communities (LCC) is an organization whose mission is to provide excellence in care, shelter, and support in a nurturing Christian environment.

LutherCare operates a number of seniors housing projects and licensed care facilities throughout Saskatchewan, as well as family housing projects and community service agencies. LutherCare has developed five life lease projects and also provides services to Villa Royale in Saskatoon, one of very few privately owned life lease developments in Western Canada.

Currently, LCC is working on a modified life lease in Regina. It is based on the Manitoba model.

Although there is no legislation compelling them to do any of these things, as a matter of policy LutherCare ensures that the projects it assists:

- Provide full disclosure;
- Offer mortgage or debenture security for purchasers;
- Maintain a First Security Fund sufficient to buy back three units. The fund is generated by grossing up entrance fees;
- Maintain replacement reserves larger than those mandated by the Condominium Act for condos;
- Allow a 14 day cooling off period;
- Insist that purchasers review their decision to buy with an independent third party.

Notwithstanding its own practices, LutherCare supports the general notion of greater regulation of life lease housing in order to protect consumers from less scrupulous sponsors and development consultants. But any regulatory framework must be as uncomplicated as possible and must not stifle innovation and creativity. LCC believes strongly that the very best consumer protection is thorough due diligence – is there a market for the project? Is it well-designed? Is there a replacement reserve fund? Is the contractor bonded? Will the sponsor buy back units? Is the timing right? The answers to these questions need to

[39] George Schell, Retirement Living Communities International Inc.

be provided earlier than when a lender requires an appraisal, and they need to be provided by an independent third party – not by the development consultant.

Gary Zock, Life Lease Associates, Toronto

Life Lease Associates is the largest life lease development consulting firm in the country. It has provided development consulting services for 34 projects comprising over 1,700 units. Most of its work is in Ontario but it has also assisted sponsors in other provinces.

Although not required to do so by law, Life Lease Associates has incorporated a number of practices in its work that enhance consumer protection including:

- Initial deposit held in trust until construction commences,
- Initial and second deposit not used for construction until financing is obtained and construction contracts are signed with bonded companies,
- Full disclosure,
- Replacement reserves exceeding Condo Act levels,
- Involvement of residents in management,
- Financial statements regularly distributed to residents post-occupancy,
- Dispute resolution clause in standard lease agreement,
- Dissolution clause in lease agreements.

Notwithstanding the measures that his company has taken to enhance consumer protection, Mr. Zock believes legislation is desirable primarily because of the lack of understanding of life lease housing among consumers and real estate lawyers. Because of this lack of understanding, lawyers often discourage their clients from considering a life lease purchase when in fact it may be a very appropriate choice.

In particular, Mr. Zock believes legislation is needed in the following areas:

- Protection of deposits
- Disclosure
- Insurance (post-occupancy)
- Dispute resolution

Christenson Developments, Edmonton

Christenson Developments Ltd. (CDL) has developed a number of life lease projects for the Lions Club and is currently building a life lease development as part of a larger aging in place community called Devonshire Village. Although the company is not aware of any problems that have occurred in Alberta with life leases, it believes that eventually, some kind of issue is going to occur and legislation to forestall this would be a good idea. The Alberta Condominium Property Act was recently revised using a very workable and satisfactory process involving all stakeholders and CDL believes a similar process would work well with life leases.

CDL suggests that the legislation could be modelled on the steps that a reputable developer or sponsor would take during the development and operation of a project, including full disclosure documents in plain English and the registration of mortgages against the title of each unit.

Chapter Five: Sponsor Survey

Because of the complexity of the issues addressed in this study, the sponsor survey was a difficult component to manage. In spite of concerted efforts on the part of CMHC and the consultant to limit the length of the questionnaire, it proved impossible to keep it shorter than 65 questions. Wherever possible, respondents were encouraged to send in copies of their legal documents so that the consulting team could refer to them for answers to the questions. In the end, a response rate of over 20% was achieved, an excellent rate under the circumstances. Face to face interviews would have improved response rates significantly but the budget did not allow for that.

Because of the geographic variability of life lease projects in Canada, sponsor responses are grouped provincially. A copy of the questionnaire is included in the appendix.

The summary categories appearing in this chapter are mostly quite straightforward.

The last question, which references consumer protection, asks: "Some people have suggested that greater government regulation of life leases would make the concept even more marketable than it is now because consumers, lenders, lawyers, and others would feel more secure about investments in life lease housing. Which phrase corresponds to your view of this suggestion?

British Columbia

	Total	Yes	No
# of projects responding	6		
# of non-profits	6		
Deposits held in trust	6		
Cooling off period		1	5
Definite lease term		2	4
Strata titled		1	5
Leases registered		5	1
Nomenclature			
owner			
tenant	2		
purchaser			
resident	4		
occupant			
Legal Advice		6	
Age restriction 55+		6	
Sub-letting allowed		5	1
Units can be willed?		1	5
Restriction on entry?		6	
Dispute resolution?		3	3
Arrange financing?		3	3
Minimum down	35-50%		
Guaranteed buy-back		6	
90 days		5	
180 days		1	
Deduction			
5%			
graduated		6	
Refund at market value		2	
Delays in refunds?			6
Refund fund?		2	4
Real estate/legal fees?		2	4
Resident council?		4	2
Access to records?		3	3
Replacement reserves?		6	
Services provided?		1	5
Consumer protection			
Strongly agree	1		
Somewhat agree	2		
Somewhat disagree	1		
Strongly disagree	1		
No opinion	1		

The most interesting aspect about the BC responses is the split on the last question.

The respondent who chose the "somewhat disagree" answer commented at length about the issues. The life lease project he represents is a very large one sponsored by a well-established organization. Some of his responses are quoted below:

"I fear the enthusiasm of bureaucrats whose common sense is replaced by slavish adherence to regulations."

"The best protection is still community protection. Projects that grow out of and are maintained by a community (faith, ethnic, veterans, geographic) achieve protection because people must answer to each other."

"Any protection must balance risks with benefits. E.g. Life leases may be riskier than ownership, but life lease complexes provide the community and care that one cannot achieve in a strata development. Do we want to protect seniors from financial risk at the expense of health, wellness, security, and peace of mind? .....Consumer protection is often achieved by emphasizing risks out of proportion. Protection is then achieved by scaring people to the point that they don't take any risks. The goal should not be to eliminate risk, but rather to educate by balancing risks with benefits or by quantifying risks or by comparing risks between various forms of ownership."[40]

The respondent who chose "strongly agree" represents one of the projects on Vancouver Island which have experienced severe difficulty and at least one of which is in foreclosure proceedings.

Alberta

	Total	Yes	No
# of projects responding	7		
# of non-profits	7		
Deposits held in trust		3	4
Cooling off period		2	5
Definite lease term			7
Strata titled		5	2
Leases registered		4	3
Nomenclature			
owner			
tenant	4		
purchaser			
resident	3		
occupant			
Legal Advice		7	
Age restriction 55+		7	
Sub-letting allowed		5	2
Units can be willed?		4	3
Restriction on entry?		6	1
Dispute resolution?		6	1
Arrange financing?		4	3
Minimum down	35% of market value		
Guaranteed buy-back		7	
90 days	5		
180 days	2		
Deduction			
5%	2		
graduated	5		
Refund at market value		5	2
Delays in refunds?			7
Refund fund?		1	6
Real estate/legal fees?			7
Resident council?		7	
Access to records?		7	
Replacement reserves?		7	
Services provided?		3	4
Consumer protection			
Strongly agree			
Somewhat agree	7		
Somewhat disagree			
Strongly disagree			
No opinion			

[40] Gerry Ebbers, Elim Housing Society.

The Alberta responses demonstrate the variability that is so characteristic of life leases even within provinces. About half the sponsors keep deposits in trust, half do not. Most do not allow a cooling off period and most are strata titled. About half refer to their residents as owners, the rest as tenants.

There are some notable areas of unanimity – all require residents to obtain independent legal advice, all have resident councils, all make financial records accessible to residents, and all have replacement reserves.

The Saskatchewan results appear on the following page.

Saskatchewan

	Total	Yes	No
# of projects responding	7		
# of non-profits	6		
Deposits held in trust		6	
Cooling off period		7	
Definite lease term			7
Strata titled		4	3
Leases registered		2	5
Nomenclature			
owner		3	
tenant		2	
purchaser		2	
resident			
occupant			
Legal Advice		5	2
Age restriction 55+		7	
Sub-letting allowed		4	3
Units can be willed?			7
Restriction on entry?		7	
Dispute resolution?		3	4
Arrange financing?			7
Minimum down			
Guaranteed buy-back		7	
90 days		7	
180 days			
Deduction			
5%			
graduated		7	
Refund at market value		4	
Delays in refunds?		3	4
Refund fund?		3	4
Real estate/legal fees?		2	5
Resident council?		3	3
Access to records?		6	1
Replacement reserves?		7	
Services provided?			
Consumer protection			
Strongly agree	3		
Somewhat agree	3		
Somewhat disagree			
Strongly disagree			
No opinion	1		

It is interesting that relative to the total number of respondents, there was a high degree of "strongly agree" answers in response to the last question. It is not clear why – there haven't been any serious problems in Saskatchewan and the major development consultant in the province (LutherCare Communities) is extremely capable and well-informed. It may be a function of Saskatchewan's heritage in terms of activist governments.

Manitoba

	Total	Yes	No
# of projects responding	4		
# of non-profits	4		
Deposits held in trust	see Manitoba section		
Cooling off period	see Manitoba section		
Definite lease term	see Manitoba section		
Strata titled		3	1
Leases registered		1	3
Nomenclature			
owner			
tenant		4	
purchaser			
resident			
occupant			
Legal Advice			
Age restriction 55+		4	
Sub-letting allowed		3	1
Units can be willed?			4
Restriction on entry?		4	
Dispute resolution?			4
Arrange financing?			4
Minimum down			
Guaranteed buy-back		4	
90 days		4	
180 days			
Deduction			
5%			
graduated			
Refund at market value		0	
Delays in refunds?		1	3
Refund fund?		4	
Real estate/legal fees?			4
Resident council?		4	
Access to records?		2	2
Replacement reserves?		4	
Services provided?		1	3
Consumer protection			
Strongly agree	2		
Somewhat agree	2		
Somewhat disagree			
Strongly disagree			
No opinion			

Response from Manitoba was extremely low in view of the number of projects in that province. Of those that did respond, all were in agreement with the notion

that government regulation increases the marketability of life lease housing.

Ontario

	Total	Yes	No
# of projects responding	13		
# of non-profits	13		
Deposits held in trust		2	11
Cooling off period		4	8
Definite lease term		2	9
Strata titled			13
Leases registered		3	9
Nomenclature			
owner	1		
tenant	3		
purchaser	3		
resident	5		
occupant	7		
Legal Advice		11	2
Age restriction 55+		13	
Sub-letting allowed		6	6
Restriction on entry?		11	1
Dispute resolution?		4	8
Arrange financing?		2	11
Guaranteed buy-back		6	7
90 days	4		
180 days	2		
Deduction			
5%	4		
6-10%	3		
graduated	5		
Refund at market value		9	3
Real estate/legal fees?		3	9
Resident council?		12	1
Access to records?		13	
Replacement reserves?		13	
Services provided?		12	1
Consumer protection			
Strongly agree	3		
Somewhat agree	6		
Somewhat disagree	1		
Strongly disagree	1		
No opinion	2		

The Ontario responses also illustrate the diversity of the life lease model as it has developed throughout Canada. But there are certain areas that display great consistency – the existence of residents' councils for example and the provision of services, which is much more common in Ontario than elsewhere.

Written Comments

Several survey respondents elaborated on their views in written comments:

"Life lease is a broad concept that has been operationalized in many different ways. I am not sure that "one size fits all" legislation/regulation is possible. Perhaps existing legislation/regulation can be enhanced for both sponsor and consumer protection?".....Dwayne Radke, The Bethany Group, Camrose, Alberta.

"A sensible set of guidelines and standards would be helpful – it is important not to over-regulate or complicate a housing venue that is propelled by local initiative – I believe that the Life Lease/Right to Occupy model can provide the right balance between independence and security that the mature adult needs – opportunity for involvement, stimulation, companionship, healthy activity, sense/pride of ownership, equity protection – we need greater education of those that play a role in our lives as we age – lawyers, financial consultants, planners and others that can assist in creating healthy communities that are assets and not liabilities as our aging population starts growing at an exponential rate in future decades – greater affordability and less demand on the public purse.".....Glen Woolner, Kitchener, Ontario.

"You cannot legislate morality or responsibility.".....Gerry Ebbers, Elim Housing Foundation, Vancouver

"Reputable, established charities must have the freedom to provide a variety of resident funded occupancy agreements that work for the community in their area. Life lease projects should not be allowed to be provided by for-profit corporations where the motivation is profit versus service.".....Rae Nafziger, New Hamburg, Ontario

"Governments needs to recognize how much life lease models vary from place to place and be very careful when writing legislation.".....Heather Jones, Unionville, Ontario

"Cannot be too restrictive and should allow sponsor flexibility, should support life lease concept, not dictate structure.".....Grace Sweatman, Toronto, Ontario

"Consumers are incredibly exposed. So much depends on the sponsoring organization.".....Marten van Huizen, Vancouver

Question 60 Revisited

Question 60 asked respondents how much they agreed with this statement: "Some people have suggested that greater government regulation of life leases would make the concept even

more marketable than it is now because consumers, lenders, lawyers, and others would feel more secure about investments in life lease housing."

Overall, responses were as follows:

Strongly agree	9
Somewhat agree	22
Somewhat disagree	1
Strongly disagree	1
No opinion	4

In light of this ranking and in light of the written comments on the questionnaires, it is probably fair to say that survey respondents believe some measure of consumer protection for life lease housing would be helpful, but that they are concerned about the nature of that protection – the minimum possible would be a clear preference for most respondents.

It is important to note however that this comment is made on the basis of a survey of sponsors, not consumers. It is entirely possible that residents of life lease projects might have a completely different view.

Chapter Six: Some Consumer Protection Issues Governments May Wish to Regulate

People disagree about the value of government regulation. Some people think that consumers require government agencies to protect them in a number of areas and believe that government can regulate effectively. Others believe consumers may require some protection but do not believe government is capable of regulating effectively. Still others believe consumers are best able to look after themselves without any interference from a third party such as government. Certainly the recent debacles in the highly regulated stock market should give rise to questions about the effectiveness of some government regulation. So what is one to conclude? Is government regulation good or bad or is that too simple a question?

Historically, legislation affecting real estate, such as Real Estate Acts, has not always provided satisfactory protection for consumers.[41]

Notwithstanding that, many people with an interest in seniors housing and in life lease believe that some type of legislative framework would be beneficial for life lease consumers for a number of reasons:

1. Other types of tenure are highly regulated through Residential Tenancy Acts, Strata Property Acts, and so on.
2. The occupants of life lease projects are seniors, who may require more protection than non-seniors.
3. A regulatory framework would help industry participants and consumers better understand the life lease form of tenure.

As part of its current consultation process, the BC government has published a set of guiding principles that will be applied in considering possible responses to life lease issues in that province. They are reproduced below, in order to establish a context for thinking about regulation.

Guiding Principles, British Columbia

1. Proportionate Response – The response to all situations should be proportionate to the seriousness of each issue and the number of it people affects. The effort, cost and degree of regulation should be justified by a demonstrated need.
2. Direct Contribution to the Objective – Any regulatory provision that is considered should be clearly linked to achieving the objective.

[41] Improving Quality and Accountability in Residential Construction, Province of British Columbia, 1997.

3. Balance - The interests of both lessors and leaseholders should be respected and accommodated to the extent possible. Neither should be given an undue advantage or disadvantage.

4. Least Cost – The costs imposed by any regulatory measures should be considered, and the cost of regulatory measures minimized, consistent with meeting the objective.

5. Competitive Markets – To the extent possible, the response should promote the maximum level of competition among participants in the real estate sector. Any regulatory provisions should not result in a competitive advantage or disadvantage for leasehold properties in relation to other types of tenure being marketed, or raise unnecessary barriers to entry or exit.

6. Flexibility – To the extent possible, the response should be flexible to enable changes in market practice to be accommodated by regulators and those being regulated.

7. Accountability – Any regulatory measures being considered should ensure that those being regulated are responsible and accountable for complying with the requirements, and that regulators are accountable for applying the spirit and substance of the regulatory regime.

Some Consumer Protection Issues Governments May Wish to Regulate

- **Disclosure**

Life leases are a relatively new form of tenure and many consumers are unfamiliar with them. Except in Manitoba and BC, there are no mandatory disclosure requirements that sponsors must observe. Competent and reputable sponsors want to ensure that purchasers clearly understand what they are buying, but the degree to which disclosure is made is an individual decision that varies from sponsor to sponsor. It is certainly not uncommon for no or very little disclosure to occur.

Following project completion, there is no requirement for sponsors to inform residents about the financial status of the project they live in (except in Manitoba), notwithstanding the fact that residents have in many cases made very significant investments in the project in question. Again, many sponsors voluntarily inform their residents about the financial status of their projects, but there is no compulsion for them to do so.

From the standpoint of enhancing consumer protection, a requirement to provide full disclosure of all material facts, including among other issues the risk of loss of entrance fees as well as ongoing disclosure of all financial information is probably the single most effective mechanism available to governments.

The Manitoba legislation requires that sponsors hold annual meetings with their residents to inform them of the financial status of their project – it is not sufficient

simply to provide financial statements to each resident.

- **Safety of Deposits Prior to Occupancy**

Prior to occupancy, there are concerns about what would happen to deposit funds if a sponsor is forced to halt construction before the project is finished, or if sufficient pre-sales cannot be made to allow construction to begin.

In BC, deposits of any size must be held in trust until occupancy is possible. In other provinces, deposits are always used for construction purposes, although it is common for initial deposits to be held in trust until construction begins. In Manitoba, entrance fees are held by a trustee and can be used for construction purposes if certain conditions are met. At all times, landlords must be able to prove that they have sufficient funds to finish the building.

Many non-profit sponsors believe that the ability to use deposits for construction purposes is absolutely critical to the continuation of the life lease model. The fact that sponsors in BC are not able to use resident equity may account for the relative scarcity of life lease projects in that province.

Although there is no record of consumers losing their deposits as a result of project failure during the construction stage in any province, there is no question that funds are at some risk except in BC and Manitoba, where their use during construction is either prohibited (BC) or strictly regulated (Manitoba).

Ontario is considering a system of deposit insurance. Other provinces may wish to refer to the Manitoba legislation, which permits the use of deposits during construction but under very defined circumstances.

- **Security of Occupancy**

Consumers may invest very significant amounts of money in life lease projects, the security for which varies greatly from province to province and from sponsor to sponsor. In Manitoba, entrance fees are usually secured through an interest registered against the title of the property in the name of the resident, although this mortgage ranks below any mortgage of the lender. In some projects in Saskatchewan and Alberta, residents hold mortgages on their units that are registered at Land Titles. In a sense, these residents have the legal rights of a lender – they could foreclose and take title to their unit if circumstances made this necessary – if the sponsor were unable to refund entrance fees for example.

In BC, where most recent projects have been strata titled (although all titles are held in the name of the sponsor), some leases are registered on title. In Ontario, life lease projects are not normally strata titled – only a few projects have been strata titled to date (e.g. Two Neptune Drive). Because there is no definitive legal description for each unit in non-strata titled developments, only an assignment of leasehold interest registered against the overall property is possible. However the unit the lease applies to is still identified so the registration of a lease on the building title is as effective in protecting the

security of a lease holders' tenure as a lease registered on a strata title.

Many sponsors routinely ensure that their residents' interests are registered in some way on title, in order to protect both resident and sponsor. In BC, the Superintendent of Real Estate insists that some mechanism be used to register residents' interests on title, either by way of lease registration or by way of mortgage registration.

Other provinces could take similar steps.

There are other issues related to security of occupancy, notably lease termination provisions. In addition to standard lease termination clauses (e.g. for non-payment), most life lease agreements include the ability to live independently as a condition of occupancy. What happens when questions arise about the ability of a resident to continue living independently varies from project to project.

This is a very complicated issue, involving sponsor liability as well as resident rights. Legislation may be appropriate to ensure that occupants are not unfairly treated and to protect sponsors from the risk of legal action, although it would have to be framed carefully.

- **Refunding of Entrance Fees**

Where they are available (most commonly in Western Canada), so-called "guaranteed" buy-back provisions are an important and very appealing feature of life lease projects from the perspective of purchasers. Where guaranteed buy-backs are provided for, there is usually some period of time specified before sponsors are required to refund entry fees – usually from 90 to 180 days. Many agreements also incorporate a provision for a longer refund period in the event of slow markets – up to two years in many cases.

The market value model that is so common in Ontario avoids the problem of landlords having insufficient funds to repay entrance fees because residents are responsible for finding a buyer for their unit at whatever price they can achieve. They may experience losses, as any condo owner might, but they will not be due to inadequate refund funds.
Most life lease projects that do not operate on a market value basis count on repaying entrance fees to outgoing residents with entrance fees received from incoming residents. Many are also building up funds that will make the refunding process easier and quicker, but there is no question that life lease residents outside Ontario are basically just as vulnerable to poor market conditions as those within Ontario.

There is really no practical way of ensuring that life lease residents are never at risk of losing part or all of their entrance fees, as there is no practical way of ensuring that losses do not occur in any real estate transaction.

Life lease projects that allow for the possibility of stratification and individual ownership in the event of project failure can provide some protection against loss of entrance fees, at least against total loss.

Full disclosure about how and under what circumstances entrance fees will be

refunded will at least ensure that consumers are aware of the risks they are assuming.

- **Replacement Reserves**

Condominium legislation ensures that strata councils make provision for replacement reserves but there is no legislative requirement (except in Manitoba) for life lease operators to do the same. Reputable sponsors will make provision for replacement reserves as a standard operating procedure, but there is no law compelling them to do so.

The fact that sponsors are going to be involved in the ongoing operation of the project for many years provides a strong incentive to ensure adequate replacement reserves. Nevertheless, governments that are thinking of introducing legislation might want to consider the usefulness of including a requirement for mandatory replacement reserves, similar to Condo Acts, as well as annual reporting of the amounts in them as required in the Manitoba legislation. Periodic reserve fund studies should also be undertaken to ensure that reserve funds are adequate.

- **Warranty protection**

The issue of warranty protection is irrelevant in some cases and very relevant in others. As tenants, Manitoba life lease residents are in no way responsible for the maintenance and upkeep of the building, as is the case with all tenants. But as purchasers, neither are residents of Hillside Village in Camrose or Luther Heights in Saskatoon because maintenance and upkeep is the responsibility of the building owners (the sponsors). These purchasers would not require protection from a New Home Warranty program. In other cases, warranty protection may be more important. Some life lease projects may be covered under the mandatory warranty system in BC,[42] but in Ontario, life lease projects are not covered under the Ontario New Home Warranty program because they are not deemed to be a form of ownership housing.

Depending on the nature of occupancy agreements, consumers may not have any need of warranty protection or they may have the same need as any condominium owner.

Warranty protection is mandatory in only two provinces where life lease housing exists, BC and Ontario. In Ontario life leases are not eligible for coverage although they are in BC.

Life lease consumers must understand exactly what the maintenance, repair, and warranty provisions are in the projects they live in or are contemplating moving to. Such information could readily be included in disclosure statements.

- **Provision of Services**

Many life lease projects already offer services to their residents and more are likely to do so as time goes on. The

[42] The Homeowner Protection Act in BC requires that new homes be built by licensed residential builders who provide mandatory third party warranty insurance on new homes. An exemption from home warranty insurance is provided to purpose built rental buildings where individual dwelling units are constructed for rental purposes and are not sold or otherwise disposed of for a period of 10 years. In most instances life lease developments do not qualify for warranty exemption as the units are otherwise disposed of to individuals.

provision of services can be an economic challenge for life lease operators, as it can for all operators. Meal service in particular can be very difficult to provide on a self-sustaining basis. The availability of meals and other services is a definite attraction for some life lease purchasers, but certainly not all. It is undoubtedly true, however, that as current residents age in place, many will want additional services. Some life lease operators will be able to provide them but in other cases, people may have to move to alternate accommodation.

The availability of services can create issues from a consumer protection perspective, particularly where residents have invested large amounts of capital in their home. If renters decide they do not like the quantity or quality of available services, they can simply move out. Moving out may or may not be so easy for life lease (or condo) residents. An additional potential complication arises from the fact that projects that offer services, whether life lease or condo, tend to attract older and frailer seniors who may be more vulnerable than younger seniors.

Regulators would not want to become involved in disputes over the quality of food or other such issues, but they may want to consider some way of dealing with the availability and cost of services that are promised by sponsors to life lease purchasers.

- **Stratification**

Stratification refers to the issuing of titles for each unit in a life lease complex, although all the titles remain in the name of the sponsor. Often stratification occurs because a lender or a mortgage insurer insists on it, the notion being that in the event of market failure as a life lease, the project could be easily converted into a condominium and sold off that way.

Most sponsors prefer not to strata title their projects, although there are exceptions to this general rule.[43] It is costly, it may be confusing for residents, and in BC, it means the provisions of the Strata Property Act apply.

The incidence of stratification varies across the country. Very few life leases in Ontario have been stratified, but it is quite common in Western Canada.

Projects that see the value in stratification (or that are forced to follow this route for financing reasons) ought to be free to do so, as should those who prefer not to.

- **Governance**

The involvement of residents in the operation of the life lease they live in is a complex issue. Many residents do not want to be involved in managing their building – the existence of a sponsor who provides these services is often one of the reasons people choose life lease in preference to condominiums.
Some sponsors routinely provide full disclosure of operational details; others very little. Some appoint residents to the Board of Directors, others limit resident involvement to planning social activities. Some sponsors believe residents ought to be fully aware of operational matters

[43] The Bethany Group in Camrose, Alberta stratified the second of the two life leases they have developed to protect their own assets in the event of market failure.

because of the significant amount of equity they have invested in the project, others regard residents as tenants who will get their money returned when they move out and so ought not to be concerned with management issues.

Residents in projects that are strata titled may have the same rights as strata owners (this is the case in BC), although they may not be interested in exercising those rights.

Should governments legislate mandatory resident participation in project management, whether or not residents want to participate? Although no doubt there are those who believe the answer to this question is yes, it may be that a more workable approach is to rely on full disclosure of all operating information to ensure that residents at least know how their project is being managed. Many people are attracted to life leases partly because of the ongoing presence of the sponsor/manager – they do not want to be part of the management structure as they would be in a condominium.

There may however be cases where residents do want to participate in project management – should their right to do so be legislated in view of what may be a very substantial investment?

This is an area where governments might want to tread carefully in balancing the rights of residents with the nature and operation of life lease housing projects.

- **Dispute Resolution**

Governments that are contemplating legislation might well include a provision for alternate dispute resolution such as arbitration or mediation instead of resorting to the courts for the resolution of life lease issues that become very contentious. Alternate dispute resolution is generally regarded as more accessible, more cost-effective, and generally more expeditious than the court system. In Manitoba, such issues are dealt with under the Residential Tenancies Act rather than through the courts. The Branch provides mediation and adjudication of tenancy issues and reviews proposed rent increases.

Broader Applicability of Manitoba Legislation

Although life leases operate differently in Manitoba than in most other places in Canada, there are many aspects of the Manitoba legislation that could be adapted by other provinces, disclosure and financial reporting requirements being two good examples.

The Manitoba legislation was developed after a long series of public consultations. As previously indicated in this report, a follow-up consultation conducted in the summer of 2002 indicated that the legislation was working well.

Appendix

- Cover Letter
- Sponsor Questionnaire
- Participating Sponsors

Revised final version February 6 2002

Dear----------

Further to our recent phone call, the survey we discussed is attached. As mentioned during the conversation, the study is part of an overall research project that is being funded by CMHC's External Research Program. It is intended to explore issues related to the consumer protection aspects of life lease housing. As you know, life lease housing in most provinces (Manitoba excepted) does not fall under either landlord and tenant legislation or condominium legislation. As a result, many current and prospective consumers are uncertain about the nature of the obligations that govern residency in a life lease project. In addition, several provincial governments are actively exploring issues associated with consumer protection in life lease housing with a view to determining the best way to protect consumers' interests.

As we indicated during our conversation, we believe that the availability of information about these issues will be of benefit to consumers, to sponsors, to financial institutions, and to governments. We are very grateful that you have agreed to participate in the study.

It would be very helpful for us to obtain copies of the documents that you use in the operation of your project (occupancy agreements and so on). Many of the questions in the survey refer directly to matters covered by these documents. If you prefer, you can simply refer us to the appropriate document when related questions appear in the survey and we will extract the answers ourselves. That will save you some time.

If you have any questions about any of the matters covered in the study please call me or email me, or call or email the study director, Kate Mancer. Again, thank you very much for your assistance. We will of course send you a copy of the completed report. If you return the questionnaire by _____ (2 weeks later) it would be much appreciated.

Sincerely

Helen Singbeil
Researcher
Phone/email

Kate Mancer
Project Director
phone/email

Life Lease Survey (for non-Manitoba sponsors)
Funded by CMHC's External Research Program

Please fill in the survey as completely as possible, including your name, and a contact phone number, fax number or email address where you can be reached in the event some follow-up is required. All information received will be considered confidential to the project, and no data will be published or presented which would allow identification of any individual property.

Please identify yourself

1. **Name:** _____
2. **Position (e.g. general manager):** _____
3. **Phone #:** _____
4. **Fax #:** _____
5. **Email:** _____

Please describe your sponsor

6. **Name:** _____
7. **Address:** _____

   _____
8. **Nature of sponsor (please check where applicable):**

   ____municipal government

   ____for-profit organization

   ____non-profit organization (no partner)

   ____non-profit in partnership with another non-profit organization

   ____non-profit in partnership with private developer

   ____non-profit in partnership with public agency

   ____other (please describe)_____
9. **If applicable, please briefly describe the nature of the partnership (role of partners):**

   _____

   _____

   _____

10. **Please complete the following table for the projects you have sponsored:**

Name of Project	Address of Project	Year built	# of units	Type**

** Hi-rise=H; Low-rise=L; Ground-oriented (bungalow, etc.)=G; Other=O

11. **Did you retain a development consultant to assist you during the planning and construction of your building(s)? (Please check yes or no and answer where applicable.)**

___No

___Yes ➡➡ 11a. Name of consultant: _____

Construction Phase (If your project is several years old, please complete the following section based on procedures in effect when it was built.)

12. **Please describe the deposit structure used in the development of your building(s) by completing the following table:**

Deposit	Required when?	Amount	
		$	%
First			

Second			
Third			
Final			

13. Are deposits held in trust?

__No

___Yes ➡➡ 13a. At what point can they be released? (Please check all that apply):

___At start of construction

___At occupancy

___Other (please specify): _____

13b. What would happen to deposits, in the event of sponsor bankruptcy during construction? _____

_____

Legal Issues (We would appreciate knowing what legal documents are involved in transactions. If possible, please send copies of your project's legal documents along with your completed questionnaire.)

14. **Please indicate which of the following documents are used in your project(s):** (Document names may be different in your area of Canada. If so, please write in the term used in **your** project.)

Document	Used in project?
Reservation Agreement (reserves a unit)	____No ___Yes
Disclosure Statement (full description of property matters, including financing details, management agreements, warranties, services, construction details, etc.)	____No ___Yes
Occupancy Agreement (terms and conditions of occupancy)	____No ___Yes

Entrance/Entry Fund Refund Agreement (separate from occupancy agreement) ____No ___Yes

Mortgage (if sponsor provides mortgage financing) ____No ___Yes

Other (please describe): _____ ____No ___Yes

15. Is a cooling off period provided for?

___No

___Yes ➡➡ 15a. How long is it? _____

16. Do you describe your project as a "life lease"?

___No ➡➡ 16a. What term do you use? _____

___Yes

17. In your lease documents, is a definite term (number of years) included?

___No

___Yes ➡➡ 17a. What is the term? _____

17b. Why was this term chosen? _____

_____

_____

17c. On turnover of units, is a subsequent lease the same length as the initial length?

___Yes

___No (please explain): _____

_____

18. Are the units in your project(s) strata (condo)-titled?

___No ➡➡ 18a. Why not? (Please check all that apply):

___Not legally possible.

___To avoid taxes (e.g. property purchase transfer taxes).

___To retain control over the building.

___ To qualify for a lower ongoing rate of property tax.

___Other (please explain): _____

___Yes ➡➡ 18a. Why was this step taken? (Please check all that apply):

___To meet lender requirements.

___To meet CMHC requirements.

___To enhance resident security.

___To enhance sponsor security.

___Other (please explain): _____

19. **Are leases registered at the Land Titles Office?**

___No ➡➡ 19a. Is there some indication of leasehold interest indicated on title?

___No

___Yes (please describe):

_____

_____

___Yes

Matters Concerning Residents, Occupancy Agreements

(If possible, please send us a copy of your Occupancy Agreement. It may then be possible for you to refer us to sections of the agreement rather than answering the questions that follow.)

20. What term(s) do you use to refer to your residents? (Please check all that apply.)

___owners

___tenants

___purchasers

___residents

___occupants

___other (please specify): _____

21. Are residents advised to seek independent legal advice before moving in?

___No

___Yes

22. Is there a homeowner grant of any description in your province?

___No

___Yes ➡➡ 22a. Are residents in your building eligible for the grant?

___No

___Yes

23. Is there an age restriction in your project?

___No

___Yes ➡➡ 23a. Please explain: _____

23b. What happens in the event that the surviving spouse of a resident is younger t

_____

24. **What happens if someone has made a deposit but becomes too ill to move in?**

25. **Under what circumstance(s) may a lease be terminated by the sponsor?**

___non-payment of fees

___inability to live independently

___other (please describe):_____

26. **If a resident becomes unable to live independently, please describe your procedure for terminating the lease:**

27. **Is sub-letting allowed?**

___No ➡➡ 27a. Please comment: _____

___Yes ➡➡ 27a. Please comment: _____

28. **Can units in your building be willed by the resident to their children or others?**

___No

___Yes ➡➡ 28a. How do you control subsequent occupancy? _____

_____

_____

29. Are there restrictions on management entry to units (e.g. 24 hour written notice, etc.)?

___No

___Yes ➡➡ 29a. Please describe:

_____

_____

30. Is there a dispute resolution mechanism in your operating agreement?

___No

___Yes ➡➡ 30a. Please describe:

_____

_____

_____

Entrance/Entry Fee Policies

(The following questions may also be answered by referring us to the occupancy agreement.)

31. Can occupants arrange financing from the sponsor (instead of arranging their own financing)?

___No

___Yes ➡➡ 31a. What is the minimum payment that residents must make? _____

_____

32. When residents move, are they required to sell their unit on their own?

___No ➡➡ **32a. If you guarantee to buy units back, within what time frame do you do so (e.g. 90 days of notice, 180 days of move-out, etc.)?** _____

_____

32b. If there is no guaranteed buyback, please explain the procedure: _____

_____

_____

___Yes ➡➡ 32a. How do ensure that units are sold to qualifying applicants (e.g. is there a right of first refusal)? _____

_____

32b. Who is responsible for the monthly fee while the unit remains unsold and unoccupied?

___Sponsor

___Resident

32c. Please comment: _____

_____

_____

33. Regardless of how entrance/entry fees are refunded, is there a deduction applied at move-out?

___No

___Yes ➡➡ 33a. How much is the deduction? _____

33b. What is the deduction used for? (Please check all that apply):

___ For administrative costs associated with refurbishing and marketing the unit.

___To build up a fund that will be used for future refunding operations.

___To allow some subsidization of lower income households.

___To help fund other objectives of the sponsor not directly related to housing.

___Other (please explain): _____

_____

34. Aside from the deduction discussed in the previous question, at what level is the entrance/entry fee refunded at move-out?

___At the same level as move-in.

___At market value.

___At move-in level or market value, whichever is lower.

___At move-in level plus an allowance (please explain the nature of the allowance): _____

_____

___At move-in level plus a share of market appreciation (please explain): _____

_____

___At whatever amount residents can sell their unit for.

___Other (please explain): _____

35. What entrance/entry fees do subsequent residents of the same unit pay?

___The same fees as the preceding resident.

___The market value.

___Other (please explain): _____

36. Do you have a clause in your occupancy agreement limiting the number of entrance/entry fees that must be repaid in a given period of time?

___No

___Yes ➡➡ 36a. What are the limits? _____

_____

_____

37. **In the event that entrance/entry fees cannot be refunded within the guaranteed period, what is your policy?**

_____

_____

_____

_____

38. **Have residents (or their estates) ever had to wait for an entrance/entry fee refund beyond the guarantee period?**

___No

___Yes ➡➡ 38a. In what percentage of cases did this occur? _____

39. **Do you have a special fund to provide for entrance/entry fee refunds?**

___No

___Yes ➡➡ 39a.How is it funded? _____

_____

_____

40. **Are real estate fees and legal fees payable by residents during the resale process?**

___No ➡➡ 40a. Please comment: _____

___

___

___Yes ➡➡ 40a. Please comment: ___

___

Operational issues

41. Who manages your project (i.e. property management company, manager reporting to board, self-managed, etc)? ___

42. Are some of the units in your building available on terms other than life lease (e.g. rental)?

___No ➡➡ 42a. Is there a circumstance (e.g. inability to sell on a life lease basis) where units could be otherwise occupied (e.g. rented)?

___No

___Yes (please describe): ___

___

___Yes

43. If a substantial vacancy problem occurred, how would you deal with issues such as shortfalls in funds generated by monthly fees?

___

___

___

___

44. What would happen in the event of sponsor default or bankruptcy after the building is occupied?

___

___

___

___

___

___

45. Is there provision in your operating agreement for sale of the project?

___No ➡➡ 45a. Please explain: _____

_____

_____

___Yes ➡➡ 45a. Please explain: _____

_____

_____

46. Is there a Board of Directors?

___No

___Yes ➡➡ 46a. Please describe the composition of the board (e.g. the number of members from each sponsoring organization, from the community, from the residents, e

_____

_____

47. Is there a residents' council in your building(s), separate from the Board?

___No

___Yes ➡➡ 47a. Are regular meetings of the residents' council held?

___Yes

___No

47b. What are the functions of the council? (Please check all that apply):

___Plan social activities.

___Act as liaison between Board and residents.

___Review financial operations.

___Approve changes in operation (e.g. increases in monthly fees).

___Advise (rather than direct) the activities of the manager of the building.

___Direct the activities of the manager of the building.

___Other (please explain): _____

48. Do residents have automatic access to the project's financial records if they want to see them?

___No ➡➡ 48a. Please comment: _____

_____

___Yes ➡➡ 48a. Please comment: _____

_____

49. What is covered in your monthly fees? (Please check all that apply.)

___building administration/management

___property taxes

___common area maintenance

___replacement reserve fund

___insurance (please specify policy types): _____

___utilities (please specify): _____

___other (please specify): _____

50. On what basis is the replacement reserve fund funded?

_____

___fee per square foot per month

___fee per unit type (e.g. 1bedroom)

___other (please explain): _____

51. How is the replacement reserve fund managed?

_____

_____

_____

_____

_____

52. Do you review the status of the reserve fund periodically?

___No

___Yes

53. Are the residents informed of the status of the reserve fund on a regular basis?

___No ➡➡ 53a. Please comment: _____

_____

___Yes ➡➡ 53a. Please comment: _____

_____

54. Is the building covered by a post-construction warranty?

___No

___Yes ➡➡ 54a. Please describe: _____

_____

_____

_____

_____

55. How is your building assessed for property tax purposes?

___rental

___ownership

___other (please explain): _____

56. Are residents allowed to renovate their units?

___No

___Yes

57. For which of the following is the resident responsible (rather than the sponsor)?

___minor repairs within the unit

___major repairs within the unit (e.g. carpet or appliance replacement)

___payment of property taxes

___repairs to the exterior of the building

Services

58. Do you offer support services in your project?

___No

___Yes ➡➡ 58a. Please check all that apply:

___At least one meal per day.

___Housekeeping.

___Social/recreational activities.

___Transportation (e.g. bus).

___Health related services (e.g. massage therapy).

___Licensed care.

___Other (please explain): _____

_____

58b. Do residents pay a monthly service fee (as opposed to pay per use)?
___Yes

___No

59. How do you plan to respond to residents' changing needs as they age?

___no plans

___continue with the present level of services

___provide new services in the building

___rely on services provided in the community

___other (please explain): _____

Consumer Protection Issues in General

60. Some people have suggested that greater government regulation of life leases would make the concept even more marketable than it is now because consumers, lenders, lawyers and others would feel more secure about investments in life lease housing. Which phrase corresponds to your view of this suggestion?

___strongly agree

___somewhat agree

___somewhat disagree

___strongly disagree

___no opinion

61. **Any further comments on government regulation?**

62. **Have you experienced any problems or challenges related to consumer protection issues?**

___No

___Yes ➡➡ 62a. Please describe:

63. **What types of legal or regulatory mechanisms do you believe would improve the operation of life leases in your province?**

64. **Are there other consumer protection issues that we have not raised in this questionnaire that are of interest or concern to you? If so, please describe:**

65. **If you have any additional comments, we would be very pleased to hear them:**

Thank you very much for your assistance. We appreciate it very much. Please send the completed survey and examples of legal documents back in the enclosed self-addressed envelope. If we have under-estimated the cost of postage because of the weight of the documents you are sending us, we would be more than happy to reimburse you for the additional cost.

If you have any questions or comments and would like to talk to the principal researcher working on the study, please call or e-mail:

Participating Sponsors

Project Name	City	Prov
The Shepherd's Village	Valleyview	Alberta
Hillside Village	Camrose	Alberta
Lakeside Village	Camrose	Alberta
Prince of Peace Village	Calgary	Alberta
Lions Village Castledown	Edmonton	Alberta
Lions Village Railtown	Edmonton	Alberta
Lions Village Riverside	Edmonton	Alberta
Elim Housing Society	Surrey	BC
Legion Manor	Maple Ridge	BC
Legion Gardens	Maple Ridge	BC
St Clare Villa	Victoria	BC
Lions Cove Mill Bay	Mill Bay	BC
Norkam Seniors	Kamloops	BC
St. Andrew's Residence	Chatham	Ontario
Lindenhaus	St Catherines	Ontario
Romeo Court	Stratford	Ontario
Wesley-Robins Retirement Vill	Welland	Ontario
Wyndham Gardens	Unionville	Ontario
Grafton Gage Village	St. Catherines	Ontario
Millwood Place	Brockville	Ontario
Nithview Seniors Village	New Hamburg	Ontario
Nithview Garden Homes	New Hamburg	Ontario
Suomi-Koti	Toronto	Ontario
Greenwood Court	Stratford	Ontario
Heidehog	St Catharines	Ontario
Unionville Home Society	Unionville	Ontario
Tri-Country Mennonite Homes	New Hamburg	Ontario
Sandhills Christian Community	Kitchener	Ontario
Christie Gardens	Toronto	Ontario
Luther Heights	Saskatoon	Saskatchewan
Trinity Tower	Estevan	Saskatchewan
Luther Place	Outlook	Saskatchewan
Bethany Manor	Saskatoon	Saskatchewan
Bethany Court	Saskatoon	Saskatchewan
Bethany Villa	Saskatoon	Saskatchewan
Bethany Tower	Saskatoon	Saskatchewan
Cathedral Courts	Regina	Saskatchewan
Villa Royale	Saskatoon	Saskatchewan
Transcona Place	Winnipeg	Manitoba
Golden Rule	Winnipeg	Manitoba
Bishop Lodyka	Winnipeg	Manitoba
SAM inc.	Winnipeg	Manitoba

Visit our home page at www.cmhc.ca